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IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Roland C. Doige

COMPLAINANT

A N D:

Her Majesty the Queen in Right of the Province of British Columbia as
represented by the Ministry of Finance

RESPONDENT

REASONS FOR DECISION

Tribunal Member:	Tonie Beharrell
On his own behalf:	Roland C. Doige
Counsel for the Respondent:	Audrey Lieberman
Date of Hearing:	February 8, 2008

1 I INTRODUCTION

[1] Roland Doige alleges that the respondent, Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Finance, discriminated against him with respect to a service customarily available to the public, on the basis of family status and marital status, contrary to s. 8 of the *Human Rights Code*.

[2] Mr. Doige's complaint relates to the health premiums set by the Ministry for the Medical Services Plan ("MSP"). Single people pay more in health premiums, on a per person basis, than couples or family units do. For example, at the time of the hearing, the monthly full-rate premium paid by a single person was \$54, for a household of two was \$96 (or \$48 per person), and for a household of three or more was \$108 (\$36 or less per person). Although the amount of the premiums has changed over time, the fact that single individuals pay more on a per person basis has remained unchanged for many years.

[3] Mr. Doige alleges that this discriminates against him as a single person. In particular, Mr. Doige argues that a system which requires single people to pay more per person than married people (including those in common-law and same-sex relationships) is discriminatory. The Ministry argues that it is not.

[4] Mr. Doige testified on his own behalf. Stephanie Power, the Director of Medical Services, Operations and Policy Branch of the Ministry of Health; and Paul Flanagan, a Tax Policy Analyst at the Ministry of Finance, testified on behalf of the Ministry.

2 II FINDINGS OF FACT

A. *The British Columbia Medical Services Plan*

[5] Ms. Power testified about the background and purpose of MSP. She stated that MSP is a publicly funded program, which administers a medical health insurance plan for eligible B.C. residents. MSP insures medically required services provided by physicians and supplementary health care practitioners, laboratory services and diagnostic procedures.

[6] The money to fund the MSP comes from a number of sources. First, slightly more than 50% of the funding comes from the collection of premiums from residents of British Columbia. The remainder comes from a variety of provincial taxes (fuel, property, sales and other consumer taxes) and from transfer payments from the Federal government (which are based on population).

B. *Statutory Framework*

[7] Pursuant to s. 6(1)(b) of the *Financial Administration Act*, R.S.B.C., c. 128, the respondent is responsible for, among other things, the supervision of revenues and expenditures of the government. As a result, one of the Ministry's areas of responsibility involves the setting of MSP rates, because the setting of these rates affects revenue.

[8] Section 2 of the *Medicare Protection Act*, RSBC 1996, c. 286 (the "*Act*") provides:

The purpose of this Act is to preserve a publicly managed and fiscally sustainable health care system for British Columbia in which access to necessary medical care is based on need and not an individual's ability to pay.

[9] Pursuant to s. 8 of the *Act*, the Lieutenant Governor-in-Council may prescribe premium rates for beneficiaries. Such rates may be different for different categories of beneficiaries, as defined by regulation.

[10] The *Medical Health Care Services Regulation*, BC Reg. 426/97 (the “*Regulation*”) was enacted pursuant to the *Act*. Section 8 of the *Regulation*, as amended, sets out the monthly premium rates, established in 2002, as follows:

- a. \$54 per month for a single beneficiary;
- b. \$96 per month for a beneficiary and spouse, or a beneficiary and one child; and
- c. \$108 per month for a beneficiary, spouse and one or more children, or a beneficiary and two or more children.

[11] Section 1 of the *Act* includes the following definition of “spouse”:

“spouse” means a resident who

- a. is married to another person, or
- b. is living and cohabitating with another person in a marriage-like relationship, including a marriage-like relationship between persons of the same gender.

[12] This definition of “spouse” is contained in the *Definition of Spouse Amendment Act, 2000*, SBC 2000, c. 24, and came into force on July 28, 2000 (BC Reg. 280/2000).

C. MSP Premiums

[13] Since the inception of MSP, premiums have been charged on the basis of three categories: single beneficiary; single beneficiary plus a spouse or child; and single beneficiary plus two or more additional family members.

[14] Since 1982, MSP premium rates for single people have exceeded premium rates for two people in the same household by an amount ranging from \$1 to \$6 per month per person.

[15] MSP premiums are calculated on the basis of two factors. The first, as noted above, is household size. The second is household income.

[16] Households with net income of \$20,000 or lower are not required to pay any MSP premiums. For households with income between 20,001 and 28,000 per year, discounts of between 20-80% of the full MSP rate are made. Households with an “adjusted” income of \$28,000 and over are required to pay the full MSP premium rates.

[17] Ms. Power testified that, in general, single people have an easier time accessing premium assistance. This is because eligibility for premium assistance is based on household income.

[18] For single individuals, only their income is used to calculate “household income”. For a two or more person household, the combined income of the household (minus some adjustments) is considered. For example, there is a \$3,000 adjustment for each additional person in the plan after the subscriber. In other words, a single person with an

annual income of \$28,000 or under would qualify for premium assistance, while a two-person household with an annual income of \$31,000 or under would qualify.

[19] Ms. Power testified that although, in theory, premium assistance is equally available to all households, it is harder for a two person household to qualify based on the combined income threshold. She stated that, in her experience, premium assistance is more readily available for one person households than for two person ones. This assertion is supported by statistics, provided by the Ministry, which indicate that 34.8% of one-person households receive some level of MSP premium assistance, while only 16.9% of two-person households do.

D. Rationale for difference in premiums

[20] The Ministry witnesses characterized MSP premiums as a form of tax. The premiums are required to be paid and they go into the general revenue. In addition, there is no specific nexus between the premiums and any service: first, the premiums do not cover the cost of the service; and second, there is no connection between the level of premiums one pays and the services they receive (in other words, those who require a greater amount of medical services do not pay a higher premium than those who do not require any medical services).

[21] The Ministry witnesses testified that, as premiums can be seen as a form of tax, they are determined in light of the overall system of taxation, and should not be separated from it. In this regard, Ms. Power testified that, in assessing the differences in premium rates, it is important to look at the whole picture of the money collected by the government. It is not appropriate just to pull one piece out of it.

[22] Mr. Flanagan also gave evidence on this point. Mr. Flanagan has been employed as a Tax Policy Analyst for the Ministry of Finance for 16 years. It is his responsibility to advise the Ministry of Finance on tax policy issues, including the setting of the MSP premium rates.

[23] Mr. Flanagan testified that a broad range of factors are taken into account with respect to the setting of tax policy. These include: revenue implications, economic efficiency (the impact of the tax or levy on the economy), incidence/tax burden (who bears the burden of the tax), ability to pay, public acceptability, and legality.

[24] Mr. Flanagan testified about a number of considerations that specifically related to the MSP premium rate structure.

[25] First, Mr. Flanagan testified that the MSP premium rate structure recognizes that the costs for a household are directly related to the number of people in the household, and that the ability to cover household costs decreases as the size of the family increases. This is an “ability to pay” consideration.

[26] Second, Mr. Flanagan testified that the Ministry attempted to keep the premium rates low across various income levels in an effort to ensure the efficiency of the tax.

[27] Third, Mr. Flanagan testified that the Ministry bore in mind the larger provincial taxation picture when it considers setting premium rates. This includes the premiums themselves, the availability of premium assistance, and the overall provincial tax burden.

[28] In this regard, Mr. Flanagan gave evidence with respect to a variety of types of situations that could arise with respect to the MSP premium burden and total tax burden that would be experienced by households in a number of different situations.

[29] Mr. Flanagan first looked at the example of households with income of \$20,000 per person. A single individual with this income would pay provincial personal income tax of approximately \$233, and no MSP premiums, for a total burden of \$233.

[30] In contrast, a two-earner couple with income of \$20,000 per person would pay \$466 total in provincial income tax, pay the full annual MSP premium rate of \$1,152 (\$96 x 12 months), for a significantly higher total tax burden per adult of \$809.

[31] Mr. Flanagan further contrasted this situation with a single income couple with \$40,000 in income. In this example, the provincial personal income tax paid would be approximately \$1,233, and the MSP premiums would be \$1,152, for a total tax burden per adult of \$1,192.

[32] Mr. Flanagan repeated this example with respect to individuals with income of \$25,000 and \$30,000 per person. In the first case, a two earner couple had a higher per person tax burden than a single individual. In the second case, the single individual had the higher per person tax burden. In both cases, a single income couple making the same income per person had the highest total tax rates. The following tables summarize Mr. Flanagan's calculations.

TABLE 1: Income of \$20,000 per person

	Single Individual (\$20,000)	Two single individuals (\$20,000 each)	Two-earner couple (\$20,000 each)	Single income couple (\$40,000 total income)
Provincial personal income tax	233	466	466	1233
MSP premiums	0	0	1152	1152
Total	233	466	1618	2385
Total tax per adult	233	233	809	1192

TABLE 2: Income of \$25,000 per person

	Single Individual (\$25,000)	Two single individuals (\$25,000 each)	Two-earner couple (\$25,000 each)	Single income couple (\$50,000 total income)
Provincial personal income tax	643	1286	1286	2034
MSP premiums	389	778	1152	1152
Total	1032	2064	2438	3186
Total tax per adult	1032	1032	1219	1593

TABLE 3: Income of \$30,000 per person

	Single Individual (\$30,000)	Two single individuals (\$30,000 each)	Two-earner couple (\$30,000 each)	Single income couple (\$60,000 total income)
Provincial personal income tax	1015	2030	2030	2849
MSP premiums	648	1296	1152	1152
Total	1663	3326	3182	4001
Total tax per adult	1663	1663	1591	2000

[33] Mr. Flanagan summarized the information by saying that there are a spectrum of ways in which total household income can be made up, and the government recognizes this diversity and attempts to set rates in a way that recognizes many different situations.

E. Mr. Doige's MSP Premiums

[34] Mr. Doige moved to British Columbia in 1995. He enrolled with MSP at that time. From December 2004 onward, Mr. Doige refused to pay the full \$54 monthly premium. Rather, he paid \$48, which is half of the charge for a family of two. MSP billed him for the remainder, but it went unpaid. From January 2006 onward, Mr. Doige was in receipt of premium assistance, and paid a reduced MSP rate. Mr. Doige was provided with this assistance retroactively, which resulted in a refund to him. The respondent then used the bulk of this refund to pay Mr. Doige's outstanding balance.

[35] Mr. Doige notes that the current rate he pays under premium assistance is still more than half of the rate paid by a family of two in the same income bracket.

3 III ANALYSIS AND DECISION

[36] Mr. Doige alleges that the respondent has discriminated against him regarding a service customarily available to the public, on the basis of his marital or family status, contrary to s. 8 of the *Code*. Section 8 states, in part:

(1) A person must not, without a bona fide and reasonable justification,

...

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

because of the ... marital status, [or] family status, ... of that person or class of persons.

[37] As the complainant, Mr. Doige bears the burden of proving his complaint on the balance of probabilities. To do this, he must establish a *prima facie* case that he was

discriminated against on the grounds alleged. A *prima facie* case context is one which “covers the allegations made and which, if ... believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent...”: *O’Malley v. Simpsons-Sears Limited*, [1985] 2 S.C.R. 536 (at p. 558).

[38] If Mr. Doige establishes a *prima facie* case, then the respondent bears the legal burden of proving that it had a *bona fide* and reasonable justification for its actions and, in particular, that it reasonably accommodated the complainant to the point of undue hardship.

A. What analysis should be used to determine whether Mr. Doige has established a prima facie case of discrimination?

[39] Currently, human rights jurisprudence is somewhat unsettled as to what the appropriate analysis of the *prima facie* case is.

[40] Under the traditional analysis, to make out a *prima facie* case of discrimination in the context of s. 8 of the *Code*, a complainant must establish that: he falls within a group protected by the prohibited ground(s) alleged; he received differential treatment regarding an accommodation, service or facility customarily available to the public; and the basis for the differential treatment was at least, in part, the prohibited ground. In addition, the complainant must establish that he suffered some adverse effect for a finding of discrimination to be made: *Waters v. B.C. Medical Services Plan*, 2003 BCHRT 13, at para 130.

[41] A somewhat different approach was set out by the Supreme Court of Canada in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 571 (“*Law*”), a case decided pursuant to s. 15(1) of the *Canadian Charter of Rights and Freedoms*. In *Law*, the Supreme Court set out the following approach with respect to establishing a breach of s. 15(1) of the *Charter*:

1. Does the impugned “law” (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant’s already disadvantaged position within Canadian society resulting in substantively differential treatment between the complainant and others on the basis of one or more personal characteristics?
2. Is the claimant subject to differential treatment on the basis of one or more enumerated and analogous grounds? and
3. Does the differential treatment discriminate, by imposing a burden upon or withholding a benefit from the claimant in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration? (para. 88)

[42] For a time, the Tribunal attempted to reconcile these two approaches, generally applying the traditional approach in the first instance, but applying the *Law* approach in the alternative. In all cases, the two approaches led to the same conclusion.

[43] The Tribunal has held that both forms of analysis require the Tribunal to make the same fundamental determination: whether discrimination in the substantive or purposive sense has been established. Both the traditional analysis and the *Law* analysis are, therefore, means to the same end. In each case, the analytical approach used will depend on the complaint before the Tribunal and the issues raised: see *Preiss v. B.C. (Ministry of Attorney General)* (No. 3), 2006 BCHRT 587; *Esposito v. B.C. (Ministry of Skills, Development and Labour)* (No. 2), 2006 BCHRT 300.

[44] In this case, I find that the *Law* guidelines are of assistance in determining the issues before me. I say this for the following reasons.

[45] First, the case involves government actions: the Ministry sets the MSP premiums through regulation. Thus there is a clear “governmental overtone” to the case: see the reasons of Madam Justice Saunders in *Vancouver Rape Relief Society v. Nixon*, [2005] BCCA 601, at para. 39

[46] Second, and relatedly, because the complaint relates to government action, this is a case where Mr. Doige could have advanced his claim as a breach of his right to equality under s. 15 of the *Charter* in B.C. Supreme Court. If he had done so, the Court would have analysed the case in accordance with the Supreme Court’s equality jurisprudence, including *Law*. The approach should not differ merely because the case is being heard in a different venue.

[47] Third, in determining and implementing MSP premiums, the respondent takes into account a number of competing policy considerations. The more nuanced approach provided by the *Law* framework is better suited to assessing situations of this nature.

[48] In that context, I turn to consider whether Mr. Doige has established a *prima facie* case of discrimination on the facts of this case.

B. Has Mr. Doige established a prima facie case of discrimination?

[49] Thus, in assessing whether Mr. Doige has made out a *prima facie* case of discrimination in the circumstances of this case, I must consider whether Mr. Doige has established that:

- (a) the law or standard draws a formal distinction between him and others on the basis of marital and family status;
- (b) he is subject to differential treatment on the basis of marital and family status; and
- (c) the differential treatment discriminates, by imposing a burden upon or withholding a benefit from him in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that he is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration.

[50] In my view, Mr. Doige has established the first two criteria. First, the MSP rates do draw a formal distinction between him and others on the basis of marital and family status. One of the primary factors taken into account in establishing MSP premiums is household size, which is intrinsically connected with both family and marital status. Mr. Doige’s MSP premiums are assessed on the basis that he is single.

[51] Second, I find that Mr. Doige has established that he has been subjected to differential treatment on the basis of family and marital status. As a single person, he pays higher premiums, on a per person basis, than any other household grouping.

[52] The real issue in the complaint is whether Mr. Doige has established that this differential treatment is discriminatory in a substantive and purposive sense. Does the differential treatment impose a burden on Mr. Doige in a manner that reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that, as a single person, he is less capable or worthy of recognition or value as a human being or as a member of Canadian society?

[53] For the reasons which follow, I find that Mr. Doige has not established that the differentiation in the premium rates is substantively discriminatory.

[54] In *Law*, the Supreme Court held that, in order to determine whether discrimination has occurred, the analysis of each inquiry should be made in a purposive and contextualized manner (including the historical, social, political, and legal context of the claim). The contextual factors which determine whether legislation has the effect of demeaning a person's dignity must be construed and examined from the perspective of the claimant. In addition, the issue must be approached from the perspective of the reasonable person, dispassionate and fully apprised of the circumstances, possessed of similar attributes to and under similar circumstances as the claimant: paras. 59-61.

[55] The Supreme Court identified four possible contextual factors that may be relevant to determining whether a claimant's dignity has been demeaned:

- a) A pre-existing disadvantage, vulnerability, stereotyping or prejudice experienced by the individual or group;
- b) The ground upon which the claim is based and the nature of the differential treatment;
- c) The ameliorative purposes or effects of the impugned legislation; and
- d) The nature and scope of the interests affected.

[56] The Court indicated that the list of factors is not closed, and not all four factors will necessarily be relevant in every case. As noted by the Tribunal in *Preiss*, the list of factors does not constitute a strict test, but rather provides a cluster of points of reference. In the circumstances of this case, I find that these four factors are of assistance.

1. Are single people subject to pre-existing disadvantage, vulnerability, stereotyping or prejudice?

[57] I consider first whether the differential treatment experienced by Mr. Doige has the effect of compounding any pre-existing disadvantage, vulnerability, stereotyping or prejudice experienced by single individuals. With respect to this consideration, the Supreme Court of Canada stated, in *Law*:

One consideration which the Court has frequently referred to with respect to the issue of pre-existing disadvantage is the role of stereotypes. A stereotype may be described as a misconception whereby a person or, more often, a group is unfairly portrayed as possessing undesirable traits, or traits which the group, or at least some of its members, do not possess. In my view, probably the most prevalent reason that a given legislative provision may be found to infringe s. 15(1) is that it reflects and reinforces existing inaccurate understandings of the merits, capabilities and worth of a particular person or group within Canadian

society, resulting in further stigmatization of that person or the members of the group or otherwise in their unfair treatment. (para. 64)

[58] There has been at least one case in which a court has held that single individuals are subject to a pre-existing disadvantage. In *Gwinner v. Alberta (Human Resources and Employment)* [2002] A.J. No. 1045, the Alberta Court of Queen's Bench considered whether provisions of the *Widows' Pension Act* (the "WPA") discriminated against older divorced, separated and single women contrary to s. 15 of the *Charter*. The purpose of the WPA was to provide a pension bridge to old age security for women (or men) in traditional marriages, who were between the ages of 55 and 64 years, and who were poor or of low income because of unemployability and because dependency upon a spouse was disrupted by death. The WPA and the program created by the legislation were intended to provide social assistance without the stigma and indignity associated with welfare programs.

[59] The claimants alleged that the provision of pension and benefits to widows and widowers in the 55-59 year age group, while denying such benefits to the divorced, separated, and never married, with the same or greater need, amounted to the denial of services customarily available to the public and discrimination under the applicable human rights statute on the ground of marital status.

[60] The human rights panel dismissed the complaint, but the Alberta Court of Queen's Bench allowed the appeal, and found the complainants had established discrimination. Of particular interest for the purposes of the analysis in the present case, the Court found that never-married women were in a position of pre-existing disadvantage. In coming to this finding, the Court considered evidence that women who find themselves unmarried in mid-life face issues of economic, social and emotional survival in a society traditionally organized around family groups which are similar to those faced by divorced and separated individuals of the same age. In addition, there was evidence that the average income of women in the age group in issue was significantly lower than the average income for men.

[61] The decision was upheld by the Alberta Court of Appeal: *Gwinner v. Alberta (Human Resources and Employment)*, [2004] O.J. 788 (Q.L.). However, the issue of pre-existing disadvantage faced by single women aged 55-64 (as opposed to divorced and separated women of that age) was not specifically addressed.

[62] The circumstances before me are significantly different than those at issue in *Gwinner*. Specifically, in *Gwinner*, there were issues of intersecting grounds of disadvantage: age, sex, and family/marital status. These issues do not arise on the facts of this case. Mr. Doige did not lead any evidence that either he personally, or "single persons" generally are subject to pre-existing disadvantage, vulnerability or prejudice which is compounded by the differential rates for MSP premiums.

2. *Does the distinction correspond with the needs, capacities and circumstances of single individuals?*

[63] I turn to the second contextual factor from *Law*. Does the distinction drawn take into account the actual needs, capacities or circumstances of Mr. Doige and other single individuals in a manner which respects their value as human beings and members of Canadian society?

[64] In this regard, it is clear that MSP premiums have been set by the respondent taking into account a number of factors, including household expenses, overall tax burden and variable access to MSP premium assistance. Thus, while the premiums imposed on single individuals are comparatively higher than those imposed on a household of two or more, the

premium assistance plan is organized in such a way that it is easier for single individuals to access premium assistance, as compared to households of two or more.

[65] It may well be that the factors influencing the setting of the premium rates do not correspond perfectly with individual circumstances in every case. There may well be single individuals, who are not eligible for premium assistance, who will pay higher premiums, on a per-person basis, than those paid by households of two or more. However, as noted by the Supreme Court of Canada in *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84:

... we cannot infer disparity between the purpose and effect of the scheme and the situation of those affected, from the mere failure of the government to prove that the assumptions upon which it proceeded were correct. ... The legislator is entitled to proceed on informed general assumptions without running afoul of s. 15 ... provided these assumptions are not based on arbitrary and demeaning stereotypes. (para. 56)

[66] In this case, as noted above, there is no basis on which I could find that the respondent proceeded on the basis of assumptions based on arbitrary and demeaning stereotypes.

3. *Does the differential treatment have an ameliorative purpose or effect?*

[67] The third contextual factor looks at whether the differential treatment has an ameliorative purpose or effect which accords with the purposes of the *Code*. The question is whether the challenged distinction was designed to improve the situation of a more disadvantaged group. As noted by the Court in *Law*:

An ameliorative purpose or effect which accords with the purpose of s. 15(1) of the *Charter* will likely not violate the human dignity of more advantaged individuals where the exclusion of these more advantaged individuals largely corresponds to the greater need or the different circumstances experienced by the disadvantaged group being targeted by the legislation. (para. 72)

[68] In this case, there is no evidence which would support a finding that the different household sizes represent “advantaged” or “disadvantaged” groups. What is clear from the evidence, however, is that the premium rates were set having regard to a broad range of factors and policy considerations, and that the premium rates are part and parcel of a much larger picture, including both provincial income tax considerations and access to premium assistance. In this regard, courts have frequently noted that it is the very essence of the tax system to make distinctions, “so as to generate revenue for government while equitably reconciling a range of necessarily divergent interests”: *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627, p. 676; see also *Troupe v. Canada*, [2002] T.C.J. No. 77 (Q.L.).

4. *What is the nature or scope of the interests of single individuals which are affected by the differential treatment?*

[69] The fourth contextual factor requires an assessment of the nature or scope of the interest affected by the differential treatment. In *Law*, the Court noted that it is relevant to this enquiry to consider whether the distinction restricts access to a fundamental social institution, or affects a basic aspect of full membership in Canadian society.

[70] In this case, the interest affected is a financial one. Single individuals in each income bracket pay comparatively more in MSP premiums than couples in the same income

bracket. The difference ranges from \$1.20 in the lowest income bracket at which premiums are paid, to \$6.00 per month at the full premium rate.

[71] As noted by the Supreme Court of Canada in *Law*, while economic loss is clearly relevant to the determination of whether a complainant has suffered “substantive disadvantage”, it is not alone sufficient. Such economic loss must be considered in the broader context of the purposes of the provision and long-term effects of the differential treatment.

[72] Mr. Doige did not argue that the differences in premium costs affected either his own access to health care, or the access to health care for single people more generally. There was also no evidence before me that would support such an argument. Thus, on the evidence before me, there is no indication that the distinction has the effect of restricting access to the MSP program, or affecting a basic aspect of full membership in Canadian society.

5. *Conclusion on the prima facie issue*

[73] The contextual factors outlined in *Law* are designed to assist the adjudicator in assessing whether the complainant has established that the differential treatment has had the effect of discriminating against the complainant in the substantive or purposive sense. As the Court has emphasized, that inquiry is to be taken from the perspective of a reasonable person, in circumstances similar to those of the claimant, who takes into account the contextual factors relevant to the claim: para. 75. The inquiry has been described as both subjective and objective.

[74] Considering the issue as a whole, I find that Mr. Doige has not established that the differential MSP premiums established by the respondent demean his human dignity as a single person.

[75] Rather, in my view, the MSP premium levels are part of a complex system of taxation and benefits. As argued by the Ministry, it is not helpful to select one aspect of that system and determine that it is discriminatory, without viewing it in light of the broader system of which it is a part.

[76] I cannot find that the premium rates, viewed as part of this complex system, demean single individuals in any way. There is no evidence showing that single individuals are subject to pre-existing disadvantage. The differential rates are not premised upon stereotypical views of the needs and abilities of single individuals, and in no way perpetuate the view that single individuals are less capable or worthy of recognition or value as human beings or as members of Canadian society. Single individuals are not marginalized, ignored, or devalued by the premium rates. While I accept that Mr. Doige finds these differential rates to be unfair and incomprehensible, I find that a reasonable person, fully apprised of the circumstances, would not see those rates as insulting or demeaning.

4 IV CONCLUSIONS

[77] For the reasons outlined above, I find that Mr. Doige has not established a *prima facie* breach of s. 8 of the *Code*. I therefore dismiss his complaint.

Tonie Beharrell, Tribunal Member