

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

DENNIS MANUGE, RAYMOND TOTH, BETTY BROUSSE,  
BRENTON MACDONALD, JEAN-FRANCOIS PELLETIER,  
and DAVID WHITE

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

FEDERAL COURT  
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OCT 30 2019

Date \_\_\_\_\_  
Registrar \_\_\_\_\_  
Greffier \_\_\_\_\_

VANESSA GEORGE  
REGISTRY OFFICER  
AGENT DU GREFFE

CONSOLIDATED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules* serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date 10 October 2019

Issued by " TANYA SMITH "

*Amended: October 30, 2019.*

Address of  
local office: 90 Sparks Street  
Ottawa, Ontario  
K1A 0H9

**TO:** **Her Majesty the Queen**  
C/O the Registry  
Federal Court of Canada  
90 Sparks Street  
Ottawa, Ontario  
K1A 0H9

**AND TO:** **The Attorney General of Canada**  
C/O the Registry  
Federal Court of Canada  
90 Sparks Street  
Ottawa, Ontario  
K1A 0H9

## CLAIM

### Overview

1. This proposed class proceeding concerns the Defendant's errors in the calculation of annual adjustments applicable to disability benefits received by members and veterans of the Canadian Armed Forces ("CAF") and Royal Canadian Mounted Police ("RCMP") and their spouses, common-law partners, dependants, survivors, orphans, and others, including estates ("Proposed Class"). The errors resulted in reduced benefit entitlement payments to the Proposed Class.
2. Members of the Proposed Class are entitled to disability and related benefits, including monthly disability pensions and awards under the *Pension Act* and the *Royal Canadian Mounted Police Superannuation Act* ("RCMP Superannuation Act"), and disability awards under the *Veterans Well-being Act*.
3. Annual adjustments ensure that basic monthly disability pensions and awards payable under the *Pension Act*, disability awards payable under the *Veterans Well-being Act*, and related benefits payable under other Federal legislation (collectively, "Disability Benefits"), keep pace with cost of living and price inflation. The annual adjustments are based on calculations that take into account: (a) annual increases in the Canadian Consumer Price Index ("CPI"), and/or; (b) average wages of certain categories of federal public sector employees minus income tax for a single person calculated in the province with the lowest combined provincial and federal income tax rate ("Wage Rate").
4. On 5 November 2018, Canada's Veterans Ombudsman, Guy Parent ("Veterans Ombudsman"), announced that his office had discovered "an accounting indexation error

by Veterans Affairs Canada (VAC)" and that "VAC estimates that this error could total around \$165 million for the period [between] 2003 and 2010." The Veterans Ombudsman found that the Defendant had failed to factor the basic provincial tax credit into calculation of the Wage Rate, resulting in lower annual adjustment rates and reduced payments to eligible recipients of Disability Benefits. The Veterans Ombudsman reported that VAC had estimated that the error ("original error") affects about "270,000 Veterans" of the CAF and RCMP as well as "Survivors, and their estates."

5. The Defendant has publicly acknowledged and made commitments to correct the original error. In November 2018, the Defendant announced that \$165 million had been secured for purposes of correcting the original error.

6. Based on access to information requests and other investigations made since the Veterans Ombudsman discovered the original error, the Plaintiffs have discovered additional errors in the Defendant's annual indexing calculations, which are detailed in this Consolidated Claim. These additional errors include the Defendant's failure to calculate the Wage Rate using the province or territory with the lowest combined provincial and federal income tax rate and failure to take into account the entire class of persons who are affected by the original and additional errors.

7. The Plaintiffs and the Proposed Class did not become aware of the original error, and resulting underpayments by the Defendant, until the Veterans Ombudsman and the Minister of Veterans Affairs announced the original error in November 2018. The Plaintiffs and Proposed Class did not become aware of the additional errors until responses to

access to information requests were received in 2019 following announcement of the original error by the Veterans Ombudsman and the Minister.

8. To date, the Defendant has not paid the Plaintiffs and the Proposed Class for the shortfall in Disability Benefit entitlements caused by the original and additional errors.

9. The Defendant is liable to the Plaintiffs and the Proposed Class for damages and/or restitution. The Proposed Class, a vulnerable group of disabled individuals entitled to Disability Benefits, has suffered harm as a result of the Defendant's errors, omissions, and mismanagement in the calculation of annual adjustments. The Defendant has caused, and continues to cause, the Proposed Class to wait several years before receiving Disability Benefit entitlements at rates prescribed by statute.

10. This proposed class proceeding seeks damages or restitution for any underpayments, including equitable compensation and/or interest, and any related loss caused by the Defendant's errors in calculating and applying correct annual adjustment rates to Disability Benefits.

11. The Plaintiffs therefore claim on their own behalf, and on behalf the Proposed Class:

- (a) an order pursuant to Part 5.1, Rules 334.12, 334.16, and 334.17 of the *Federal Courts Rules* certifying a class proceeding, and appointing the Plaintiffs as Representative Plaintiffs for the Proposed Class;
- (b) a declaration that the Defendant has erred in calculating Disability Benefit entitlements owed to the Proposed Class;

(c) an order for damages in an amount equal to the amount of benefits payable to the Plaintiffs and the Class that were wrongfully withheld because of the calculation errors;

(d) an order for restitution in an amount equal to the amount of benefits payable to the Plaintiffs and the Class that were wrongfully withheld;

(e) an order for general damages in an amount to be proven at trial;

(f) an order for equitable compensation to account for the loss of use of entitlements withheld because of the calculation errors relating to annual adjustments, and/or interest on all such amounts;

(g) costs of this action;

(h) costs of notice and of administering a plan for distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334 of the *Federal Courts Rules*; and

(i) such further and other relief as this Court deems just.

12. The statutory grounds for the claim are:

(a) *Federal Courts Act*, R.S.C. 1985, c. F-7 and *Federal Courts Rules*, SOR/98-106;

(b) *Pension Act*, R.S.C. 1985, c. P-6 and *Pension and Allowance Adjustment Regulations*, SOR/91-620;

- (c) *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10; *Royal Canadian Mounted Police Superannuation Act*, R.S.C., 1985, c. R-11 and *Royal Canadian Mounted Police Superannuation Regulations*, C.R.C., c. 1393;
- (d) *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50;
- (e) *Veterans Well-being Act*, S.C. 2005, c. 21 and *Veterans Well-being Regulations*, SOR/2006-50;
- (f) *Department of Veterans Affairs Act*, R.S.C., 1985, c. V-1, and *Veterans Health Care Regulations*, SOR/90-594;
- (g) *Veterans Review and Appeal Board Act*, S.C., 1995, c. 18;
- (h) *Civilian War-related Benefits Act*, R.S.C., 1985, c. C-31;
- (i) *Children of Deceased Veterans Education Assistance Act*, R.S.C., 1985, c. C-28;
- (j) *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.); *Income Tax Regulations*, C.R.C., c. 945;
- (k) *Interpretation Act*, R.S.C. 1985, c. 21; and
- (l) such further and other statutory provisions as counsel may submit and this Court accept.

## Parties

### a) Plaintiffs

13. Dennis Manuge is a resident of Nova Scotia and a former member of the CAF. Mr. Manuge served in the CAF from August 1994 until being discharged in December 2003 because the medical conditions he suffered while in service meant he could no longer meet all *bona fide* occupational requirements of universality of service under s. 33 of the *National Defence Act*. Mr. Manuge has received a monthly disability pension since 2002.

14. Raymond Toth is a resident of Ontario and a former member of the CAF. Mr. Toth served in the CAF his entire working life before being discharged in 2007 because his disability meant he could no longer meet all *bona fide* occupational requirements of universality of service under s. 33 of the *National Defence Act*. Mr. Toth has received a monthly disability pension since February 2004.

15. Betty Brousse is a resident of Ontario and a former member of the CAF. Ms. Brousse served in the CAF for 27 years before her retirement in November 2001. Ms. Brousse has received a monthly disability pension since October 2000.

16. Brenton MacDonald is a resident of Ontario and a former member of the RCMP. Mr. MacDonald served in the RCMP for 38 years before retiring in 2004. Before his retirement, Mr. MacDonald worked on pensions, benefits, and compensation while stationed with the RCMP "A" Directorate, Compensation Branch. Mr. MacDonald has received a monthly disability pension since April 2004.

17. Jean-Francois Pelletier is a resident of Nova Scotia and a former member of the CAF. Mr. Pelletier served in the CAF from 1986 until his retirement in 2005. Mr. Pelletier has received a monthly disability pension since 2002.

18. David White is a resident of Nova Scotia and served as a member of the RCMP commencing in February 1973. Mr White retired from the RCMP in July 2002 because the medical disability he suffered while on-duty meant he was unable to perform the responsibilities of his position within the RCMP. Mr. White has received a monthly disability pension since August 2002.

**b) Defendant**

19. Her Majesty the Queen is named pursuant to section 3 of the *Crown Liability and Proceedings Act* as a representative of the Government of Canada, the Minister of Veterans Affairs, and the Minister of Public Safety and Emergency Preparedness.

20. The Minister of Veterans Affairs is responsible for administering the *Pension Act*, the *Veterans Well-being Act*, and related Federal legislation, and determining the amount of Disability Benefits payable to current members of the CAF, CAF veterans, and their survivors and dependants. The Minister of Public Safety and Emergency Preparedness is charged with administering the *RCMP Superannuation Act*, which provides that the amount of monthly disability pension payable to members of the RCMP, RCMP veterans, and their survivors and dependants shall be determined in accordance with the applicable provisions of the *Pension Act*.

## **Pensions for Disabled Veterans and Members of the CAF and RCMP**

21. The *Pension Act* establishes and recognizes the obligation of the Government of Canada to provide benefits to members of the Canadian Forces, veterans, and their eligible survivors and dependants who have become disabled as a result of military service.

22. The *RCMP Superannuation Act* applies the same *Pension Act* obligations for members of the RCMP, RCMP veterans, and their eligible survivors and dependants who have become disabled as a result of law enforcement service.

23. Disability pension entitlements for CAF members and veterans are determined under s. 21 of the *Pension Act*. Disability pension entitlements for RCMP members and veterans are determined under s. 32 of the *RCMP Superannuation Act*, which incorporates and relies on the disability pension scheme provided under the *Pension Act*.

24. Section 35 of the *Pension Act* prescribes that the amount of disability pension a pensioner receives shall generally be determined in accordance with the assessment of the extent of a service-related disability.

25. Disabled members and veterans of the CAF and RCMP receive monthly disability pension benefits based on the prescribed amounts in Schedule I of the *Pension Act* ("Schedule I"). The amount of the disability pension increases based on the degree of impairment measured within a "Class". Schedule I lists 21 Classes that correspond to a "Range of Disability", as determined by an assessment of the extent of disability, which quantifies the rate of pension payable as described in the following chart:

<b>Class</b>	<b>Range of Disability</b>	<b>Rate of Pension</b>
1	98-100%	100%
2	93-97%	95%
3	88-92%	90%
4	83-87%	85%
5	78-82%	80%
6	73-77%	75%
7	68-72%	70%
8	63-67%	65%
9	58-62%	60%
10	53-57%	55%
11	48-52%	50%
12	43-47%	45%
13	38-42%	40%
14	33-37%	35%
15	28-32%	30%
16	23-27%	25%
17	18-22%	20%
18	13-17%	15%
19	8-12%	10%
20	5-7%	5%
21	Less than 5%	Prescribed amount payable in one final payment

26. Section 74 of the *Pension Act* defines “basic pension” as the monthly basic pension payable under Schedule I to a Class 1 pensioner without a spouse, common-law partner, or child. A Class 1 pensioner is an individual who is paid at the full rate of pension (100%) under the *Pension Act* based on a disability assessment ranging from 98% to 100%. All other figures under Schedule I are calculated as a percentage of the Class 1, or basic pension, amount.

27. Schedule I also provides additional pension amounts a pensioner may receive for: spouses or common-law partners (25% of the pension amount for each Class); one child (13% of the pension amount for each Class); two children (22.5% of the pension amount for each Class); and, each additional child (7.5% of the pension amount for each Class).

#### **Annual Adjustments to Pensions**

28. Annual adjustment provisions under Part V of the *Pension Act* require the basic pension amount listed in Schedule I to be adjusted annually based on a statutory formula.

29. Section 75 of the *Pension Act* provides that the basic pension rate available in Schedule I, pensions for death in Schedule II, and allowances in Schedule III shall be adjusted annually so that the basic pension payable for a month in the following calendar year is the greater of (a) or (b):

- (a) an amount equal to the product obtained by multiplying
  - (i) the basic pension that would have been payable for that month if no adjustment had been made under Part V *Pension Act* with respect to that following year,

by

(ii) the ratio that the Consumer Price Index for the first adjustment year that relates to that following year bears to the Consumer Price Index for the second adjustment year that relates to that following year;

**OR**

(b) an amount equal to one twelfth of the average annual gross composite wage, as of the thirty-first day of October of the year in which the adjustment is made, of categories of unskilled members of the federal public administration designated by the Minister, minus income tax for a single person calculated in the province with the lowest combined provincial and federal income tax rate.

30. Section 78 of the *Pension Act* applies the annual adjustment provisions in Part V of the *Pension Act* to monthly disability pensions payable to RCMP members and veterans under the *RCMP Superannuation Act*.

#### **Original Calculation Error Admitted**

31. In a Statement released on 5 November 2018, the Defendant announced an error “in the calculation of disability pension adjustment rates.” The Defendant estimated that its calculation error deprived “upwards of 270,000 Veterans, RCMP members, and their survivors” of their full entitlements based on the statutory adjustment rates. The Defendant further announced that \$165 million in funding had been secured to address the problem.

32. In addition to the miscalculation acknowledged by the Defendant in the 5 November Statement, the Plaintiffs and the Proposed Class allege that the Defendant miscalculated annual adjustments under section 75 of the *Pension Act* in each of the following respects:

(a) From 2002 to present, the Defendant incorrectly used either Ontario or British Columbia as the province with the lowest income tax rate for the Wage Rate calculation. During the same period, however, Nunavut had a lower income tax rate that should have been used instead of Ontario or British Columbia rates. Section 35 of the *Interpretation Act* defines “province” in every enactment to include Nunavut.

(b) From 2007 to present, the Defendant incorrectly failed to include the Canada Employment Amount in its calculation of the “income tax for the single person” or « le montant de l’impôt sur le revenu d’une personne célibataire » of a member of the federal public administration for purposes of the Wage Rate calculation.

(c) From 2002 to present, the Defendant incorrectly failed, in determining the Wage Rate, to include the Northern Resident Deduction (prescribed Zone A) in its calculation of the “income tax for the single person calculated in the province with the lowest combined provincial and federal income tax rate” or « le montant de l’impôt sur le revenu d’une personne célibataire calculé dans la province où le taux cumulatif de l’impôt sur le revenu tant fédéral que provincial est le plus bas ». Every “single person”

or « personne célibataire » living in Nunavut, which is prescribed Zone A under section 7303.1 of the *Income Tax Regulations* for the purposes of section 110.7 of the *Income Tax Act*, is eligible to claim the Northern Resident Deduction.

33. The Plaintiffs claim, on their own behalf and on behalf of all members of the Proposed Class, damages or restitution in an amount equal to the amount of all pension amounts incorrectly withheld, plus equitable compensation to account for loss of use of the amounts withheld, and/or interest and any related loss caused by the calculation errors.

#### **Awards for Disabled Veterans and Members of the CAF and RCMP**

34. Section 45 of the *Veterans Well-being Act* permits the payment of a disability award to members or veterans who establish that they suffer from a disability resulting from a service-related injury or disease or a non-service-related injury or disease that was aggravated by service.

35. Disability awards are paid to eligible individuals according amounts listed under Schedule 3 of the *Veterans Well-being Act* ("Schedule 3"). The amount of a disability award increases based on the rate of pain and suffering measured within 25 categories corresponding to an established extent of disability. Columns 3 and 4 of Schedule 3 prescribes the maximum monthly or lump sum amounts payable for each established category based on the extent of an eligible individual's service-related disability as described in the following chart:

Column 1	Column 2	Column 3	Column 4
Rate of Pain and Suffering Compensation (%)	Extent of Disability (%)	Monthly Amount (\$)	Lump Sum Amount (\$)
100	98-100	1,150.00	365,400.00
95	93-97	1,092.50	347,130.00
90	88-92	1,035.00	328,860.00
85	83-97	977.50	310,590.00
80	78-82	920.00	292,320.00
75	73-77	862.50	274,050.00
70	68-72	805.00	255,780.00
65	63-67	747.50	237,510.00
60	58-62	690.00	219,240.00
55	53-57	632.50	200,970.00
50	48-52	575.00	182,700.00
45	43-47	517.50	164,430.00
40	38-42	460.00	146,160.00
35	33-37	402.50	127,890.00
30	28-32	345.00	109,620.00
25	23-27	287.50	91,350.00
20	18-22	230.00	73,080.00
15	13-17	172.50	54,810.00
10	8-12	115.00	36,540.00
5	5-7	57.50	18,270.00
4	4	46.00	14,616.00

Column 1	Column 2	Column 3	Column 4
Rate of Pain and Suffering Compensation (%)	Extent of Disability (%)	Monthly Amount (\$)	Lump Sum Amount (\$)
3	3	34.50	10,962.00
2	2	23.00	7,308.00
1	1	11.50	3,654.00

### Annual Adjustments of Disability Awards

36. Section 63.1(1) of the *Veterans Well-being Regulations* provides that the maximum monthly or lump sum payments that constitute disability awards under the *Veterans Well-being Act* shall be adjusted annually on 1 January in accordance with the percentage increase to the CPI, rounded to the next 0.10%, for the year ending on 31 October of the previous year.

37. Section 63.1(2) of the *Veterans Well-being Regulations* defines CPI as “the annual average all-items Consumer Price Index for Canada (not seasonally adjusted) published by Statistics Canada.”

38. Responses to access to information requests have led the Plaintiffs to believe that VAC has made errors in the calculation of annual CPI adjustments to disability awards under the *Veterans Well-being Act*. In particular, the Defendant underpaid disability award recipients by approximately \$24 million between 2007 and 2010.

### **VAC Administration of Programs for RCMP Veterans and Members**

39. Under a Memorandum of Understanding executed 5 September 2002 between VAC and the RCMP, VAC is responsible for the adjudication, assessment, payment and administration of disability awards and benefits.

### **Annual Adjustments Applied in Related Federal Legislation**

40. Annual adjustments to disability pensions and disability awards are relied upon in related Federal legislation that provides benefits to the Proposed Class. The related Federal legislation determines amounts payable for benefits based on the rates of annually adjusted disability pensions or disability awards. The Defendant's errors in calculating annual adjustment rates for disability pensions and disability awards are repeated for every benefit payable under Federal legislation that is based on the annual adjustments to disability pensions under the *Pension Act* or disability awards under the *Veterans Well-being Act*. The related Federal Legislation includes: the *Department of Veterans Affairs Act*, R.S.C., 1985, c. V-1; the *Veterans Health Care Regulations*, SOR/90-594; the *Civilian War-related Benefits Act*, R.S.C., 1985, c. C-31; and the *Children of Deceased Veterans Education Assistance Act*, R.S.C., 1985, c. C-28.

### **Violation of the *Pension Act* and *Veterans Well-being Act***

41. The underpayment of Disability Benefits to the Proposed Class violates the terms of the *Pension Act* and the *Veterans Well-being Act*.

**Negligence**

42. The underpayment of Disability Benefits violated the duty and standard of care the Defendant owed the Proposed Class under the *Pension Act* and the *Veterans Well-being Act*, and constitutes negligence. The Plaintiffs, and the Proposed Class, suffered damages caused, in fact and in law, by the Defendant's negligence in properly calculating and applying annual adjustments. The damages suffered by the Plaintiffs, and the Proposed Class, are direct and not too remote in law.

**Unjust Enrichment**

43. The failure to pay the full entitlement of Disability Benefits under the *Pension Act* and the *Veterans Well-being Act* is not justified in law. There is no juristic reason for the failure to calculate annual adjustments to basic disability pension rates or disability awards. The Defendant has been unjustly enriched by withholding or failing to account for the amounts of Disability Benefits that would have been paid but for the calculation errors. The Plaintiffs and Proposed Class have been unjustly deprived of these amounts.

**Illegal Assignment or Charge Contrary to the *Pension Act***

44. The failure to annually adjust the basic pension payable in accordance with s. 75 of the *Pension Act* constitutes an improper and illegal assignment, charge, attachment, anticipation, commutation, or security pledge of a disability pension contrary to s. 30 of the *Pension Act*.

**Breach of Fiduciary Duty**

45. As the sole administrator of disability pensions under the *Pension Act* and *RCMP Superannuation Act*, and disability awards under the *Veterans Well-being Act*, the Defendant owed a fiduciary duty to the Plaintiffs and the Proposed Class.

46. The Defendant's unique position as the sole administrator of Disability Benefits left the Plaintiffs and the Proposed Class uniquely, and peculiarly, vulnerable to the exercise of power or control maintained by the Defendant.

47. The Defendant breached its fiduciary duty by failing to ensure the full, proper, and timely payment of Disability Benefits. The breach of fiduciary duty caused the Plaintiffs and Proposed Class damage and loss for which the Defendant is liable.

**Breach of Contract**

48. The Plaintiffs and the Proposed Class served the Defendant in military and law enforcement. The Plaintiffs and the Proposed Class suffered injury or became disabled as a result of their service. The purpose of the Disability Benefits is to provide the Plaintiffs and the Proposed Class with income in respect of their injuries and/or disabilities.

49. The Defendant made common representations to the Plaintiffs and the Proposed Class in documents, direct mailings, brochures, orientation kits, and web postings that certain Disability Benefits entitlements were payable.

50. The Defendant has failed to honour its contractual obligations by unreasonably withholding and delaying the payment of Disability Benefits owed to the Plaintiffs and the Proposed Class.

**Waiver of Tort**

51. In the alternative, despite having suffered damages due to underpayment of Disability Benefits, the Plaintiffs on their behalf and on behalf of the Proposed Class elect to waive the Defendant's tort and instead recover the benefits wrongfully accrued by the Defendant at the expense of the Plaintiffs and the Proposed Class. In the circumstances, the Defendant should disgorge those benefits.

**Accounting**

52. Further, or in the alternative, the Plaintiffs and the Proposed Class, are entitled to an accounting and disgorgement of the benefits that accrued to the Defendant as a result of the calculation errors. The accounting should include all money, and any other forms of consideration, had or received by the Defendant up to and including the date of the trial of this proposed class proceeding. The Defendant should be ordered to pay all amounts as may be determined pursuant to the accounting, along with equitable compensation and/or interest for the loss of use any amounts improperly withheld.

**Dennis Manuge**

53. Dennis Manuge entered the CAF in August 1994. As a result of his service in the CAF, Mr. Manuge suffers from a number of medical conditions. Mr. Manuge was discharged from the CAF in December 2003 because, based on medical conditions suffered while in service, Mr. Manuge could no longer meet all *bona fide* occupational requirements of universality of service under s. 33 of the *National Defence Act*. Mr. Manuge continues to receive a monthly disability pension under the *Pension Act* that he began receiving in 2002.

**Raymond Toth**

54. Raymond Toth entered the CAF in October 1985. Mr. Toth began receiving a monthly disability pension under the *Pension Act* on 23 February 2004, when the Department of Veterans Affairs determined that Mr. Toth's Osteoarthritis Lumbar Spine was pensionable under subsection 21(2) of the *Pension Act*, and assessed it at 5% disability under subsection 39(1) of the *Pension Act*.

55. Mr. Toth was discharged from the CAF in 2007 because his disability meant he could no longer meet all *bona fide* occupational requirements of universality of service under s. 33 of the *National Defence Act*. Mr. Toth currently receives a monthly disability pension based on a 20% disability under the *Pension Act*.

**Betty Brousse**

56. Betty Brousse entered the CAF in October 1974. Ms. Brousse began receiving a monthly disability pension under the *Pension Act* on 27 October 2000, when the Department of Veterans Affairs determined that Ms. Brousse's Lumbar Disc Disease ("LDD") was pensionable under subsection 21(1) of the *Pension Act* and her Bilateral Chondromalacia was pensionable under subsection 21(2) of the *Pension Act*. The Department of Veterans Affairs assessed Ms. Brousse's LDD at 10% disability and determined the entitlement to be payable effective 7 February 2000. Her Bilateral Chondromalacia was assessed at 10% disability and made payable effective 27 October 2000.

57. Although Ms. Brousse retired from the CAF on 5 November 2001, her disability affects her daily life and she continues to receive a monthly disability pension under the *Pension Act*.

### **Brenton MacDonald**

58. Brenton MacDonald joined the RCMP in 1965. Mr. MacDonald began receiving a monthly disability pension in April 2004 based on a service-related injury. For over five years before his retirement from the RCMP in 2004, Mr. MacDonald dealt with RCMP-related pensions, benefits, and compensation issues while stationed in the RCMP "A" Directorate, Compensation Branch in Ottawa.

59. Mr. MacDonald continues to receive a monthly disability pension administered under the *Pension Act*.

### **Jean-Francois Pelletier**

60. Jean-Francois Pelletier joined the CAF in 1986. From 1986 until 2005, Mr. Pelletier served as a CAF member in the Royal Canadian Navy. In 2002, Mr. Pelletier was deployed to the Gulf region serving in Operation Apollo, as part of Canada's military contribution to the international campaign against terrorism led by the United States.

61. Early in his career, Mr. Pelletier suffered a fall injuring his foot while in the course of his duties. In 2002, as his condition became progressively worse, he applied for a disability pension through Veterans Affairs Canada. While he was still serving as a CAF member, Mr. Pelletier began receiving a disability pension in the amount of approximately

\$2,000.00 a month under the *Pension Act*. He continues to receive a monthly disability pension administered under the *Pension Act*.

### **David White**

62. David White joined the RCMP in February 1973. In May 2001, Mr. White was serving as a constable with the RCMP detachment located in Bridgewater, Nova Scotia. He was on duty and investigating a report of a break-in at a private residence. Mr. White was unaware that the owner of the residence had modified an alarm so that it would cause an extremely loud sound when triggered. Upon Mr. White approaching the resident, he triggered the loud alarm.

63. Mr. White's exposure to the alarm has caused him to suffer from hearing loss, tinnitus in both ears and hyperacusis. Tinnitus is refers to experiencing a constant high-pitched ringing sound in the affected ear. Hyperacusis is a severe sensitivity to sound, including everyday sounds such as television, ringing phone or lawnmower.

64. Mr. White was medically discharged from the RCMP as a result of being unable to perform the duties of his position due to his service-related disabilities. Mr. White continues to receive a monthly disability pension under the *Pension Act* that he began receiving in August 2002.

### **The Proposed Class**

65. For purposes of Sub-Rules 334.16(1)(b) and 334.17(1)(a), the Proposed Class is defined as:

All Canadian Armed Forces and Royal Canadian Mounted Police members and veterans, and their spouses, common-law partners, dependants, survivors, orphans, and any others, including eligible estates of all such persons, who received, at any time between 2002 and the present, disability and related benefits from the Defendant that were subject to annual adjustment under either the *Pension Act* or *Veterans Well-being Act*.

The Plaintiffs propose that this action be tried at Ottawa.

10 October 2019



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