

Court File: T-512-24

**FEDERAL COURT**

**PROPOSED CLASS PROCEEDING**

BETWEEN:

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

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

**FRESH AS AMENDED 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 \_\_\_\_\_ Issued by \_\_\_\_\_

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

**TO: His Majesty the King**  
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  
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## CLAIM

### Overview

1. This proposed class proceeding concerns the Defendant's errors in the calculation of the annual adjustment applicable to 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, or estates ("Proposed Class"). This proposed class proceeding addresses reduced entitlement payments to the Proposed Class from January 1, 2024 onwards.

2. Members of the Proposed Class are entitled to benefits, including monthly disability pensions and awards under the *Pension Act* and the *Royal Canadian Mounted Police Superannuation Act* ("RCMP Superannuation Act").

3. Annual adjustments ensure that basic monthly disability pensions and awards payable under the *Pension 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. 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 and will continue to suffer harm as a result of the

Defendant's errors, omissions, and mismanagement in the calculation of annual adjustments, which are ongoing.

5. This proposed class proceeding seeks damages or restitution for any underpayments, including equitable compensation and/or interest, and any related loss from January 1, 2024 onwards caused by the Defendant's errors in calculating and applying correct annual adjustment rates to Disability Benefits.

6. 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.

7. 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) *Veterans Well-being Act*, S.C. 2005, c. 21 and *Veterans Well-being Regulations*, SOR/2006-50;

- (e) *Department of Veterans Affairs Act*, R.S.C., 1985, c. V-1, and *Veterans Health Care Regulations*, SOR/90-594;
- (f) *Veterans Review and Appeal Board Act*, S.C., 1995, c. 18;
- (g) *Civilian War-related Benefits Act*, R.S.C., 1985, c. C-31;
- (h) *Children of Deceased Veterans Education Assistance Act*, R.S.C., 1985, c. C-28;
- (i) *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.); *Income Tax Regulations*, C.R.C., c. 945;
- (j) *Interpretation Act*, R.S.C. 1985, c. 21; and
- (k) such further and other statutory provisions as counsel may submit and this Court accept.

## **Parties**

### **a) Plaintiffs**

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

**b) Defendant**

13. His Majesty the King 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.

14. 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*.

15. 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.

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

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

17. 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.

18. 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 for under the *Pension Act*.

19. 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.

20. 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

21. 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.

22. 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**

23. 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.

24. 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.

25. 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*.

**Calculation Errors**

26. 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) The Defendant incorrectly used Ontario 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 rates. Section 35 of the *Interpretation Act* defines “province” in every enactment to include Nunavut; and

(b) 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 the purpose of the Wage Rate calculation.

27. In order to determine the basic pension effective January 1, 2024, the Defendant applied the increase in CPI to the basic pension effective in 2023. However, the basic pension in 2023 was miscalculated and lower than it should have been due to the Defendant's above calculation errors. The Defendant most recently applied the Wage Rate to determine the basic pension in 2018, and the Defendant's above errors meant that it underpaid the basic pension for that year. Therefore, in subsequent years, the Defendant applied the CPI rate to a lower basic pension from the previous year than it should have in accordance with the statute.

28. 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 starting on January 1, 2024, 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.

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

29. 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*.

### **Breach of the *Pension Act***

30. By underpaying the Disability Benefits to the Proposed Class in the manner set out above, the Defendant breached the terms of the *Pension Act*.

### **Negligence**

31. The underpayment of Disability Benefits violated the duty and standard of care the Defendant owed the Proposed Class under the *Pension 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**

32. The failure to pay the full entitlement of Disability Benefits under the *Pension Act* is not justified in law. There is no juristic reason for the failure to properly 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 the Proposed Class have been unjustly deprived of these amounts.

### **Breach of Fiduciary Duty**

33. As the sole administrator of disability pensions under the *Pension Act* and the *RCMP Superannuation Act*, the Defendant owed a fiduciary duty to the Plaintiffs and the Proposed Class.

34. 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.

35. 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 the Proposed Class damage and loss for which the Defendant is liable.

### **Accounting**

36. 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 of any amounts improperly withheld.

## The Proposed Class

37. 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, dependents, survivors, orphans, and any other individuals, including eligible estates of all such persons, who received, at any time between January 1, 2024 and the present – disability pensions and other benefits from Veterans Affairs Canada that were affected by the annual adjustment of the basic pension under section 75 of the *Pension Act* including, but not limited to, the awards and benefits listed below:

- *Pension Act* pension for disability;
- *Pension Act* pension for death;
- *Pension Act* attendance allowance;
- *Pension Act* allowance for wear and tear of clothing or for specially made apparel;
- *Pension Act* exceptional incapacity allowance;
- *Veterans Well-being* clothing allowance;
- *Civilian War-related Benefits Act* war pensions and allowances for salt water

fishers, overseas headquarters staff, air raid precautions workers, and injury for remedial treatment of various persons and voluntary aid detachment (World War II);

- *Flying Accidents Compensation Regulations* relating to compensation for flying accidents; and
- RCMP Disability Benefits awarded in accordance with the *Pension Act*.

The Plaintiffs propose that this action be tried at Halifax.

11 December 2024



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