

Federal Court



Cour fédérale

Date: 20251128

Docket: T-512-24

Ottawa, Ontario, November 28, 2025

PRESENT: The Honourable Madam Justice Kane

CERTIFIED CLASS PROCEEDING

BETWEEN:

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

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

ORDER

UPON considering the motion made by the Plaintiffs, David White, Raymond Toth, Betty Brousse, Brenton MacDonald, and Jean-Francois Pelletier, for an order certifying this action as a class proceeding;

AND UPON reading the Notice of Motion dated May 28, 2025 and the affidavits of: David White, sworn on May 28, 2025; Raymond Toth, sworn on May 23, 2025; Betty Brousse, sworn on

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May 14, 2025; Brenton MacDonald, sworn on May 23, 2025; and Jean-Francois Pelletier, sworn on May 29, 2025;

AND UPON considering the submissions of counsel for the parties;

THIS COURT ORDERS that:

1. This action be certified as a class proceeding (“Class Proceeding”) against the Defendant, His Majesty the King (HMK);
2. The class (“Class”) is defined as:

All members and former members of the Canadian Armed Forces and Royal Canadian Mounted Police, and their spouses, common-law partners, dependents, survivors, and orphans, and any other individuals, including eligible estates of all such persons, who received, at any time between January 1, 2024 and the date of the Certification Order – 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 Act 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* related to compensation for flying accidents; and
- RCMP Disability Benefits awarded in accordance with the *Pension Act*.

3. David White, Raymond Toth, Betty Brousse, Brenton MacDonald, and Jean-François Pelletier are appointed as the representative Plaintiffs on behalf of the Class.
4. The Class claims that the Defendant miscalculated benefit adjustment rates resulting in underpayments to members of the Class (“Class Members”).
5. The Class claims the following relief:
 - a. a declaration that the Defendant has erred in calculating the disability benefit entitlements owed to the Class;
 - b. an order for damages in an amount equal to the amount of benefits payable to the Plaintiffs and the Class that were allegedly wrongfully withheld because of the calculation errors;
 - c. an order for restitution in an amount equal to the amount of benefits payable to the Plaintiffs and the Class that were allegedly wrongfully withheld;
 - d. an order for general damages in an amount to be proven at trial;
 - e. 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;
 - f. costs of this action;
 - g. costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334 of the *Federal Courts Rules*; and
 - h. such further and other relief as this Court deems just.
6. The following common issues are certified for the purposes of this Class Proceeding:
 - a. Did the Defendant miscalculate disability benefit adjustment rates (“Adjustment Rates”) on monthly disability pensions, awards for service-related disabilities, or related benefits (collectively “Disability Benefits”) payable to the Class?

- b. Did the Defendant's alleged miscalculation of Adjustment Rates result in underpayment of Disability Benefits to the Class?
 - c. Did the Defendant owe a duty of care to the Class when calculating: (a) the annual adjustment of the basic pension under section 75 of the *Pension Act*; and (b) the Disability Benefits that were affected by the alleged miscalculation of the Adjustment Rates?
 - d. If the Defendant owed the Class a duty of care, did the Defendant breach the standard of care?
 - e. If the Defendant breached the standard of care, did the Class suffer damage as a result?
 - f. Was the Defendant enriched by its alleged miscalculation of the Adjustment Rates under section 75 of the *Pension Act* and the Disability Benefits that were affected by the alleged miscalculation of the Adjustment Rates?
 - g. If the Defendant was enriched, did the Class suffer a corresponding deprivation?
 - h. If the Defendant was enriched and the Class suffered a corresponding deprivation, was there a juristic reason therefor?
 - i. Is the Class entitled to an award for interest and/or "equitable compensation" or "equitable damages"?
7. The Plan of Proceeding attached hereto as Schedule "A" is hereby approved.
8. McInnes Cooper, Gowling WLG (Canada) LLP, Michel Drapeau Law Office, Murphy Battista LLP, and Koskie Minsky LLP ("Class Counsel") are appointed to act on behalf of the Class and Class Members in this Class Proceeding.
9. Notice shall be delivered to the class in the form, or agreed-upon short form bulletin, attached hereto as Schedule "B" ("Notice") in the following manner:

- a. Posting the Notice on Class Counsel's designated website (www.vetspensionerror.ca) and VAC's websites in both official languages;
 - b. The Defendant shall publish the Notice, in both official languages, in My VAC Account for Class Members;
 - c. A press release shall be issued; and
 - d. The Defendant shall provide Plaintiffs' Counsel the last known contact information for deceased Class Members.
10. A Class Member may opt out of the Class Proceeding by sending a completed Opt-Out Coupon in the form attached hereto as Schedule "C" by mail, fax, or email to Class Counsel by a date no later than 90 days from the date the Notice is published, and no Class Member may opt-out of this proceeding after that date.
 11. On or before 60 days following the end of the opt-out period, Class Counsel shall report to HMK and the Court, the names of all class members who have opted out of this proceeding.
 12. This Certification Order is without prejudice to the Class' right to bring a further motion to certify additional common issues.
 13. There shall be no costs on this motion for certification of a class proceeding.

"Catherine M. Kane"

Judge

Schedule “A”

Court File: T-512-24

FEDERAL COURT

BETWEEN:

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

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

**PLAINTIFFS’ PLAN OF PROCEEDING
(Federal Courts Rules, Rule 334.16(1)(e)(ii))**

1. Rule [334.16\(1\)\(e\)\(ii\)](#) of the [Federal Courts Rules, S.O.R./98-106 \(Rules\)](#), requires proposed representative plaintiffs to produce a plan establishing a workable method for notifying class members and advancing a proceeding on behalf of a certified class. David White, Raymond Toth, Betty Brousse, Brenton MacDonald, and Jean-Francois Pelletier (“Plaintiffs”) propose that the proceeding be conducted according to the following Plan of Proceeding (the “Plan”).

Introduction, Nature of the Proposed Class Proceeding, and Class Counsel

2. In this proposed class proceeding (the “Class Proceeding”), the Plaintiffs ask the Court to determine whether the Defendant miscalculated annual adjustment rates from January 1, 2024 to the date of the Certification Order, resulting in underpayments to class members and, if so, to assess damages, including equitable compensation, owed to the class. The proposed class (the “Class”) is defined as:

All members and former members of the Canadian Armed Forces and Royal Canadian Mounted Police, and their spouses, common-law partners, dependents, survivors, and orphans, and any other individuals, including eligible estates of all such persons, who received, at any time between January 1, 2024 and the date of the certification order – disability pensions and other benefits from Veterans Affairs

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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;
 - Clothing allowance under the [Veterans Well-being Act](#);
 - [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*.
3. The Plaintiffs are represented by five law firms acting in a consortium: Gowling WLG (Canada) LLP, Michel Drapeau Law Office, Murphy Battista LLP, Koskie Minsky LLP, and McInnes Cooper (collectively, "Class Counsel"). Class Counsel are comprised of firms that have extensive experience and expertise in representing veterans and litigating class proceedings, including proceedings involving disability benefits owing to Canadian Armed Forces ("CAF") and Royal Canadian Mounted Police ("RCMP") veterans. Class Counsel have the requisite knowledge, skill, subject matter expertise, and resources to prosecute the Class Proceeding.
4. To date, Class Counsel have devoted significant resources and energy in advancing the Class Proceeding. Class Counsel have already: obtained pertinent documents through Access to Information requests; retained expert forensic accountants and actuaries to provide independent opinions on the nature and appropriate quantification of the calculation error in present value terms; and
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prepared an interlocutory motion, namely a motion to certify the action as a class proceeding.

Identification of Class Members and Notice of Certification

5. Following certification (“Certification Order”), a Notice of Certification will be delivered pursuant to Rule [334.32](#) of the [Rules](#) in a form and manner approved by the Court (the “Certification Notice”).
 6. The Plaintiffs propose to provide the Certification Notice to members of the Class (“Class Members”) through the following means:
 - a. Posting the Notice on Class Counsel’s designated website (www.vetspensionerror.ca) and VAC’s websites in both official languages;
 - b. The Defendant shall publish the Notice, in both official languages, in My VAC Account for Class Members;
 - c. A press release shall be issued; and
 - d. The Defendant shall provide Plaintiffs’ Counsel the last known contact information for deceased Class Members.
 7. The Plaintiffs will request that the deadline for Class Members to opt-out of the Class Proceeding be within 90 days of the mailing and/or publication of the Certification Notice, or by a date to be fixed by the Federal Court, whichever is later (“Final Opt-Out Date”), and that no Class Member may opt-out of the proceeding after the Final Opt-Out Date. Opt-Out Coupons, in a form approved by the Court, will be available from Class Counsel and on Class Counsel’s website.
 8. The Certification Notice will describe the significance of opting out and explain that those Class Members who choose to opt-out will not participate in the Class Proceeding and will not receive any payment if the Class Proceeding is settled or decided in favour of the Class. The Certification Notice will also make clear that persons falling within the Class definition who do not opt-out will be considered Class Members and be bound by the Court’s Judgment or the terms of an approved settlement. The Certification Notice will direct Class Members to
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resources where they can obtain further information. A draft Notice and Opt-Out Coupon in both official languages is attached to the Certification Order.

9. The Plaintiffs propose that the Court authorize Class Counsel to receive Opt-Out Coupons or other written documentation from Class Members who wish to opt-out of the Class Proceeding.

Pleadings and Proposed Litigation Timetable

10. The Plaintiffs submit that further steps in relation to documentary and oral discovery and preparation for trial will be agreed upon after filing of a defence. Any disagreements between the parties regarding the scheduling of various deadlines can be resolved through the case management process.

Communication with Class Members

11. Class Counsel will establish and maintain a publicly-accessible common website (www.vetspensionerror.ca) to provide information on the Class Proceeding for Class Members, potential Class Members, and the public. It is intended that all documents filed with the Court, and periodic updates, will be published on Class Counsel's Website.
12. In addition, Class Counsel will appoint one or more lawyers from each firm to act as primary contacts persons for Class Members to contact in the event Class Members have questions or concerns regarding the Class Proceeding. Given the bilingual makeup of CAF and RCMP members and veterans, some of the appointed lawyers will be bilingual and Class Members will be provided information on how to access services in both official languages.

Notice of Resolution of Common Issues

13. The Court, in consultation with the parties, can settle the particulars of a further notice program following resolution of the Class Proceeding based on a decision or through settlement. It is anticipated that Class Members will again be notified through Class Counsel's and VAC's websites.
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Claims Process

14. If the Court determines the common issues in favour of the Class, the Plaintiffs and Defendant will determine the most appropriate method for administering payments. It is anticipated that the majority of payments can be made directly by the Defendant to Class Members as was done in the previously settled class proceeding known as Manuge et al. v. His Majesty the King, Court File T-119-19.

Review of the Plan of Proceeding

15. The Plaintiffs anticipate that this Plan will be reviewed periodically, as necessary, during the litigation process and modified, if required, under the continuing authority of the Court.
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Schedule “B”

CLASS ACTION REGARDING ANNUAL ADJUSTMENT OF BENEFITS ADMINISTERED BY VETERANS AFFAIRS CANADA	
<p><i>White et al. v His Majesty the King</i> Court No. T-512-24</p> <p>The Federal Court has certified a class proceeding involving alleged underpayments of certain benefits administered by Veterans Affairs Canada (“VAC”) and payable to members or former members of the Canadian Armed Forces (“CAF”) or Royal Canadian Mounted Police (“RCMP”) and their spouses, common-law partners, survivors, and other persons. If you received, at any time between January 1, 2024 and [insert date of the Certification Order], any of the awards and benefits listed below, you may be a member of the Class. Eligible estates of persons who received, at any time between January 1, 2024 [insert date of the Certification Order], any of the awards and benefits listed below may also be class members. If the class proceeding succeeds at trial, or is settled, class members may be entitled to a payment.</p> <p>WHAT IS THE CLASS ACTION ABOUT?</p> <p>VAC administers certain benefits, which must be annually adjusted.</p> <p>The Plaintiffs and the Class claim the Defendant miscalculated annual adjustment rates from January 1, 2024 to [insert date of the Certification Order], resulting in underpayments to Class members. The class proceeding seeks damages for underpayments that occurred because of the calculation errors.</p> <p>WHO ARE THE CLASS MEMBERS?</p> <p>The Federal Court has defined the Class as:</p> <p>All members and former members of the Canadian Armed Forces and Royal Canadian Mounted Police, and their spouses, common-law partners, dependents, survivors, and orphans, and any other individuals, including eligible estates of all such persons, who received, at any time between January 1, 2024 and [insert date of the Certification Order] – 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 <i>Pension Act</i> including, but not limited to, the awards and benefits listed below:</p> <ul style="list-style-type: none"> • <i>Pension Act</i> pension for disability; • <i>Pension Act</i> pension for death; • <i>Pension Act</i> attendance allowance; • <i>Pension Act</i> allowance for wear and tear of clothing or for specially made apparel; • <i>Pension Act</i> exceptional incapacity allowance; • <i>Veterans Well-being Act</i> clothing allowance; 	<p>fishers, overseas headquarters staff, air raid precautions workers, and injury for remedial treatment of various persons and voluntary aid detachment (World War II);</p> <ul style="list-style-type: none"> • <i>Flying Accidents Compensation Regulations</i> relating to compensation for flying accidents; and • RCMP Disability Benefits awarded in accordance with the <i>Pension Act</i>. <p>The CAF and RCMP veterans who commenced the class proceeding and who act as representative plaintiffs on behalf of the Class are David White, Raymond Toth, Betty Brousse, Brenton MacDonald and Jean-François Pelletier.</p> <p>WHAT DO I NEED TO DO TO TAKE PART?</p> <p>All Class Members have the right to participate in the class proceeding. You are automatically included in the proceeding and bound by the results <i>unless</i> you opt-out. If you do <i>not</i> opt-out, you will be eligible to receive a payment from a settlement or judgment in favour of the class. You do not need to do anything if you wish to participate. <i>If you wish to opt-out</i>, you must sign and deliver an Opt-Out Coupon available from any of the lawyers listed below or posted on the case website. If you wish to opt-out, you must send a signed Opt-Out Coupon to any of the lawyers listed below by no later than [date]. If you opt-out, you will <i>not</i> be eligible to receive any payment from a settlement or judgment in favour of the class.</p> <p>WHO ARE THE LAWYERS FOR THE CLASS?</p> <p>The lawyers for the class (“Class Counsel”) are:</p> <p>Gowling WLG (Canada) LLP (Toronto); Michel Drapeau Law Office (Ottawa); Murphy Battista LLP (Kelowna); Koskie Minsky LLP (Toronto); McInnes Cooper (Halifax).</p> <p>You can obtain more information about the class proceedings and the website created by Class Counsel: www.vetspensionerror.ca</p> <p>DO I NEED TO PAY ANYTHING?</p> <p>You do not need to pay any legal fees. If the case is unsuccessful, there will be no legal fees. If the case succeeds, Class Counsel may receive a scaled fee of up to 30% plus HST of any amounts recovered. The Federal Court must approve Class Counsel’s fees and any settlement of the class proceeding.</p>

<ul style="list-style-type: none">• <i>Civilian War-related Benefits Act</i> war pensions and allowances for salt water	
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**SCHEDULE "C"
OPT-OUT COUPON**

To: Class Counsel

Email address: info@vetspensionerror.ca

This is **NOT** a claim form. Completing this OPT-OUT COUPON will exclude you from receiving any compensation from any settlement of judgment in the Class Proceedings described below:

*Note: To opt-out, this coupon must be properly completed and sent to Class Counsel by email, regular mail, fax or courier at the above address no later than **[FINAL OPT-OUT DATE]**.*

Court File: T-512-24

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

Representative Plaintiffs

-and-

HIS MAJESTY THE KING

Defendant

By opting-out of this class proceeding, I understand that:

- (1) I do not wish to participate in the Class Proceeding; and
- (2) I take full responsibility for any relevant limitation period and for taking all necessary steps to assert or protect any individual claim I may have

Date: _____ Name of Class Member: _____

Signature of Witness _____ Signature of Class Member Opting-Out, or Estate Representative if Class Member is deceased.

Name of Witness: _____ Telephone: _____

_____ Email: _____

Name of Estate Representative: _____

Telephone: _____

Email: _____

If you are completing this form as an Estate Representative of a deceased Class Member, you confirm that you are lawfully authorised to act on behalf of the Estate.

For further information please consult the website located at: www.vetspensionerror.ca

