

Court File No. T-183-19



**FEDERAL COURT**

**PROPOSED CLASS PROCEEDING**

JEAN-FRANCOIS PELLETIER

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

**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.

January 25<sup>th</sup>, 2019

Issued by:



---

**HEATHER MICHAUD**  
**REGISTRY OFFICER**  
**AGENT DU GREFFE**

Address of 180 Queen Street West, Suite 200  
local office: Toronto, ON M5V 3L6

TO: **THE ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1

A. CLAIM

1. The Plaintiff claims on his own behalf and on behalf of Class Members (as defined below):

- (a) an Order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff for the Class pursuant to rule 334.16 of the *Federal Court Rules*, SOR/98-106 (the "*Federal Court Rules*");
- (b) a declaration that the Defendant, Her Majesty the Queen as represented by the Attorney General of Canada, breached its contractual obligations, its duty of care, and its fiduciary duty to the Plaintiff and the Class Members;
- (c) damages for the Defendant's breaches of its contractual obligations, its duty of care, and its fiduciary duty to the class members in the amount of \$600 million or such other sum as this Honourable Court may find appropriate;
- (d) an Order that the Defendant pay the Plaintiff and Class Members the amounts owing to date, plus interest;
- (e) an Order requiring the Defendant to disgorge and/or to make restitution to the Plaintiff on account of the profits, proceeds and income that it reaped as a result of the use and benefit of the amount owing to the Plaintiff and Class Members;
- (f) an accounting of the Plaintiff's administered monies received and expended together with any interest relating to those monies;
- (g) prejudgment and postjudgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;
- (h) costs of this action on a substantial indemnity scale or in an amount that provides full indemnity;
- (i) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*, SOR/98-106; and
- (j) such further and other Relief as to this Honourable Court may deem just.

## B. OVERVIEW OF THIS ACTION

2. This class proceeding arises out of the Defendant's miscalculation of disability benefits owed to war service veterans; Canadian Armed Forces members, veterans, and civilians; Royal Canadian Mounted police members; and, their survivors and surviving dependents ("**Eligible Members**"). As a result of the Defendant's incorrect approach to calculating disability benefits, the Plaintiff and Class were not paid the full amount of Disability Pension and Disability Awards Benefits (the "**Benefits**") owed to them by the Defendant between 2002 and 2010.
3. The Plaintiff and Class Members are injured or disabled by virtue of their military service. The Defendant, through Veteran Affairs Canada, administers Disability Pensions and Disability Awards which are binding contracts between the Defendant and Class Members.
4. Class Members rely on the timely and accurate payment of their Benefits. In particular, Class Members are particularly vulnerable as a result of their disability and age. Class Members rely on the Benefits to secure the basic daily necessities of life, including housing, medication, food and other necessities.
5. Between 2002 and 2010 (the "**Class Period**"), the Defendant miscalculated the amount of Disability Pensions and Disability Awards Benefits owed to Eligible Members affecting 270,000 Class Members (the "**Calculation Error**").
6. Although the Defendant became aware of the Calculation Error in 2010, the Defendant concealed the Calculation Error until November 5, 2018. The Defendant only disclosed the Calculation Error following an investigation by the Veterans' Ombudsman which exposed the Calculation Error after scrutinizing Veterans Affairs Canada worksheets. The Plaintiff and Class Members had no way to discover the error until November 5, 2018.
7. To date, the Defendant has not compensated the Plaintiff and Class Members for the Benefits owed to them.

8. The Defendant is liable to the Plaintiff and Class Members for damages. The Plaintiff and Class Members have suffered harm as a result of the Defendant's errors, omissions, and mismanagement. The Defendant has forced affected members to wait years before receiving their Benefits. The Defendant owes full payment including interest to Class Members who are alive as well as Class Members who have died.

### C. THE CLASS

9. The Plaintiff wishes to institute a class action, pursuant to the *Federal Court Rules*, on his own behalf and on behalf of the members forming part of the following class:

all persons who were in receipt of Disability Pensions or Disability Awards from Veteran Affairs Canada between 2002 and 2010, including spouses, estates, heirs, beneficiaries, and representatives of any of the above;

("Class Members" or the "Class")

### D. THE PARTIES

10. The Plaintiff, Jean-Francois Pelletier, resides in Dartmouth, Nova Scotia. Mr. Pelletier served as a Canadian Armed Forces Member from 1986 until 2005. He began receiving his Disability Pension Benefits in 2002. As a result of the Defendant's Calculation Error, he has not received the Benefits or interest owed to him from 2002 to 2010.

11. The Defendant, Attorney General of Canada ("Canada") is sued, pursuant to section 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 for the wrongful or negligent acts and omissions of members, employees, agents, and officers of Veterans Affairs Canada. According to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Defendant Canada is also the person in whose name proceedings are taken against the federal Crown.

**E. THE DISABILITY PENSION PROGRAM**

12. Since World War I, the Defendant has provided pensions and other financial benefits to veterans who were injured or disabled as a result of service to their country.

13. Veterans Affairs Canada administers a Disability Benefits Program (the "Program") which recognizes and compensates Eligible Members who applied and were eligible for Benefits for pain and suffering resulting from military service.

14. In particular, Eligible Members who have been diagnosed with a medical condition or disability and are able to show that the condition or disability is related to service may receive compensation under the Program.

15. The Program provides two (2) types of Benefits:

(a) Disability Pension Benefits for eligible individuals who applied before April 1, 2006 ("Disability Pension"); and

(b) A Disability Award for eligible individuals who applied after April 1, 2006 ("Disability Award").

16. Disability Pension Benefits are a tax-free monthly payment which is indexed annually for life that compensates Eligible Members for pain and suffering. The amount is based on the extent of the disability and the degree to which the disability is related to service. Disability Pension Benefits are governed by the *Pension Act*, R.S.C. 1985, c. P-6. Disability Pension Benefits of Royal Canadian Mounted Police members are also governed by the *Royal Canadian Mounted Police Superannuation Act*, R.S.C. 1985, c. R-11.

17. The Disability Award provides members with either a tax-free lump-sum payment, or annual payments for the pain and suffering associated with an injury or illness resulting from military service. The Disability Award is governed by *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c. 21 and the *Pension Act*, R.S.C. 1985, c. P-6.

**F. THE DEFENDANT'S MANAGEMENT OF THE PROGRAM**

18. At all material times, Canada was responsible for the maintenance, funding, oversight, and management of the Program.

19. Canada employed and/or authorized its servants, contractors, officers, employees of Canada and Veteran Affairs Canada (the "Agents") to manage and oversee the Program.

20. In particular, Canada is and has been responsible for:

- (a) accepting application forms submitted by Eligible Members;
- (b) assessing completed application forms to adjudicate eligibility;
- (c) communicating decisions about eligibility;
- (d) communicating with Eligible Members on an ongoing basis;
- (e) determining appropriate amount of Benefit payments, including auditing errors and omissions;
- (f) updating Eligible Members on Benefit Payment changes;
- (g) ongoing communications with Eligible Members; and
- (h) all other management and oversight of the Program.

**G. THE DEFENDANT'S CALCULATION ERROR CAUSED LOSS TO THE CLASS**

21. In 2001, the Defendant made a change to federal tax forms separating federal and provincial tax exemptions. The Defendant's staff, who administer the Benefits failed to consider this change when calculating Disability Pension and Disability Award Benefits to Eligible Members. This Calculation Error resulted in Eligible Members receiving a sum for Disability Pension and Disability Award Benefits that was less than the sum to which they were entitled.

22. In 2010, the Defendant discovered the Calculation Error. However, the Defendant failed to announce this error. The Defendant chose not to disclose or rectify the error by providing Eligible Members with retroactive Benefit payments or interest on the Benefit payments.

23. In 2017, the Veterans' Ombudsman discovered and exposed the Calculation Error after scrutinizing Veterans Affairs Canada worksheets to look into calculations following a change to the Department's program for immediate financial support for injured and disabled veterans.

24. On November 5, 2018, the Honourable Seamus O'Regan, Minister of Veterans Affairs and Associate Minister of National Defence issued a statement in respect of the Calculation Error stating that the members who were affected would receive their requisite compensation by 2020. To date, the Defendant has not compensated the Plaintiff and Class Members.

25. Canada's Calculation Error affected up to 270,000 Eligible Members who experienced significant hardship. Canada has not properly compensated these Class Members in failing to calculate and pay them their Benefits. As a result of Canada's Calculation Error, Eligible Members have lost value in their Benefits and endured pain and suffering.

26. Further, it is estimated that as many as 120,000 Eligible Members have died without being paid Benefits owed to them. These individuals will never receive the Benefits to which they were entitled.

27. In short, Canada's Calculation Error has resulted in loss to vulnerable Eligible Members who rely on Benefits to survive.

28. Canada's Calculation Error, and its subsequent cover-up, constitutes a breach of fiduciary duty, duty of care, and contractual obligations. Canada has known about the Calculation Error for years but it has not taken appropriate steps to rectify its conduct and ignored explicit recommendations aimed at rectifying the problem.



## **H. THE PLAINTIFF'S EXPERIENCE**

29. The Plaintiff is Jean-Francois Pelletier. He resides in Dartmouth, Nova Scotia.

30. From 1986 until 2005, Mr. Pelletier served as a Canadian Armed Forces Member serving in the Royal Canadian Navy. In 2002, Mr. Pelletier was deployed to the Gulf region serving in Operation Apollo, Canada's military contribution to the United States-led international campaign against terrorism.

31. 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 Veteran Affairs Canada. While he was still serving as a Canadian Armed Forces Member, Mr. Pelletier began receiving a Disability Pension in the amount of approximately \$2,000.00 a month from the Defendant, which has been indexed yearly, which he continues to receive today.

32. To date, Mr. Pelletier has not received any of the money owed to him or any interest from the Defendant due to the Defendant's Calculation Error. Mr. Pelletier has also not received any correspondence or pay statements from the Defendant with respect to his monthly Disability Pension Benefits.

33. Mr. Pelletier relies on his Disability Pension to pay for his basic necessities of life. He has suffered financial harm as a result of the Defendant's Calculation Error.

## **I. CAUSES OF ACTION**

### **i. Breach of Fiduciary Duty**

34. At all material times, Canada administered, established, funded, oversaw, operated, supervised, controlled, maintained and supported the Program through its Agents.

35. At all material times, Class Members were within the knowledge, contemplation, power or control of Canada, and were subject to the unilateral exercise of it or its Agents' power or discretion.

36. Through its administration, establishment, funding, oversight, operation, supervision, control, maintenance, and support of the Program, Canada undertook the express and implied responsibility to act in the best interests of the Class Members at all times.

37. The Class Members were entirely reliant on the skill and expertise of Canada in the implementation of the Program and payment of Benefits. The Class Members, who are vulnerable by way of age and disability, had the reasonable expectation that they would receive timely and appropriate Benefits through the Program. The timely and correct processing, calculation and payment of Benefits under the Program is crucial to the pecuniary and non-pecuniary well-being of Class Members.

38. Canada has discretion and power over the Class Members' financial and practical interests in administering and paying Benefits under the Program. Canada can unilaterally exercise such discretion over the interests of the Class Members by virtue of their position as administrator of the Program.

39. The Program is solely for the benefit of the Class Members and Class Members are entitled to be paid their Benefits.

40. Canada breached its fiduciary duties to the Plaintiff and the Class in the administration of the Program. The particulars of the breach include:

- (a) failing to pay Class Members their Benefits at the time the Class Members were entitled to receive such payments;
- (b) failing to appropriately calculate Benefits payments to compensate for delays in payment;
- (c) failing to provide Class Members accurate and timely financial and administrative information regarding their quantum of entitlement, about payment for the Benefits;
- (d) failing to rectify the Calculation Error upon discovering it;

- (e) failing to take a proper and good faith interest in the administration of the Program;
- (f) paying Class Members less with the knowledge that as a result of the omissions known to Canada each Class Member would have a reduced benefit payment and no way to support their daily living needs after discharge; and
- (g) failing to safeguard the physical and psychological needs of members whom were known to be medically unable to work.

41. Canada failed to ensure the best interests of the Class Members were being protected. In failing to calculate deficient amounts owed to Class Members, Canada sought to maximize its own interests at the expense of the Class.

42. Canada has an ongoing financial obligation to fund and administer the Program. Canada favoured its interests over the interests of the Class Members by paying the Class Members late and less than the Class Members were entitled to.

**ii. Negligence**

43. At all material times Canada, through Veteran Affairs Canada, acted as the administrator of Program. Canada owed duties to the Plaintiff and to the Class Members which include, but are not limited to, a duty to give proper consideration to, and to take reasonable care of, the Class members' financial, physical and mental well-being.

44. At all material times, the actions of Canada as administrator of the Program had a direct impact on the Class Members. The legislation governing the Program grounds the duty of care owed by Canada to the Class. The harm suffered by the Class was a reasonably foreseeable consequence of Canada's acts and omissions.

45. The Defendant is responsible for the proper administration of the Program and ensuring the timely and accurate payment of Benefits to the Class Members. The Class

Members are entirely dependent on Canada. In such circumstances, the risk of harm of the nature contemplated in this action is reasonably foreseeable.

46. There was a direct and proximate relationship and specific interaction between the Class Members and Canada, including but not limited to:

- (a) communications between Canada and the Class Members regarding pension obligations and entitlements;
- (b) Canada holding and investing pension funds on behalf of the Class; and
- (c) the payment of pensions from Canada to the Class Members.

47. Canada must have in place systems and procedures to determine Class Member obligations, entitlements and to ensure timely, complete and accurate Benefit payments.

48. Canada negligently administered the Program by:

- (a) failing to pay Class Members their Benefits at the time the Class Members were entitled to receive such payments;
- (b) failing to appropriately calculate Benefit payments;
- (c) failing to provide Class Members accurate and timely financial and administrative information regarding their quantum of entitlement, options and timing of payment for the Benefits;
- (d) failing to take appropriate steps for the prevention of the Calculation Error in processing and paying of Benefits which the Class Members were entitled to;
- (e) failing to rectify the Calculation Error upon discovering it;

- (f) failing to disclose the Calculation Error until seven (7) years after the last improper payment was made, and well after many Eligible Members died;
- (g) failing to hire staff with sufficient training and in sufficient numbers to process payments in a timely manner;
- (h) failing to take a proper and good faith interest in the administration of the Program;
- (i) failing to pay Class Members whom were known to be suffering from a disability and for whom the only source of income would be the Benefits; and
- (j) failing to safeguard the physical and psychological needs of Eligible Members whom were known to be medically unable to work.

**iii. Breach of Contract**

49. The Class Members served the Defendant in military and related service. By no fault of their own, Class Members were injured or disabled as a result of their military service. The purpose of the program is to provide Class Members with income in respect of their injuries and/or disabilities.

50. Canada made common representations to the Class by way of documents, direct mailings, paper brochures, orientation kits and web postings that the Benefits were payable to injured and disabled Class Members.

51. By unreasonably delaying the payment of Benefits owed to the Plaintiff and Class Members, Canada has not honoured its obligations to them.

52. Canada breached its contractual duties to the Plaintiff and the Class. The particulars of the breach include:

- (a) failing to pay Class Members their Benefits at the time the Class Members were entitled to receive such payments;
- (b) failing to appropriately calculate Benefit payments;
- (c) failing to provide Class Members accurate and timely financial and administrative information regarding their quantum of entitlement, options and timing of payment for the Benefits; and
- (d) failing to pay Class Members whom were known to be suffering from a disability and for whom the only source of income would be the Benefits.

**J. DAMAGES SUFFERED BY THE CLASS**

53. The Plaintiff and Class Members have suffered damages as a result of the Defendant's actions. As a result of the Defendant's Calculation Error, the value of each of the Class Members' Benefit entitlement was reduced and Class Members have been deprived of their correct payments under the Plan. The Defendants should compensate the Class for their loss.

54. The Defendants knew, or ought to have known, that as a result of their actions Class Members would suffer significant damages, including the following:

- (a) immediate loss reflected in reduced Benefit payments for 2002-2010; and
- (b) interest for the period 2002 to the date the Benefit payments are paid.

55. At all material times, the Defendant has known, or ought to have known, and continues to know, that ongoing delay in failing to rectify the institutional failures pleaded above would continue to create, continue to aggregate and contribute to the Class Members' injuries and damages.

56. The Plaintiff seeks compensation for his/her loss, and the loss of the Class for the amount they ought to have received in Benefits, as well as interest that the Defendant accumulated on the amounts owed to Eligible Members.

57. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

#### **K. UNJUST ENRICHMENT AND DISGORGEMENT**

58. In the alternative, as described above, the Defendant has realized cost savings from its misconduct by depriving the Plaintiff and Class Members of their Benefits and retaining those Benefits from 2002 to present.

59. The Defendant realized the cost savings by breaching its fiduciary duties, contractual obligations, as well as through its negligence in administering the Class Members' Benefit.

60. The Plaintiff and Class Members have suffered a corresponding loss by being deprived of their Disability Pension and Disability Award Benefits.

61. The Defendant must account to the Class and disgorge the Benefits owed to them between 2002 and 2010, as well as any interest owed on the Benefits from 2002 to present. The Class is entitled to a constructive trust over these monies.

#### **L. RELEVANT STATUTES**

- (a) *Federal Court Rules*, SOR/98-106;
- (b) *Federal Courts Act*, R.S.C., 1985, c. F-7;
- (c) *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
- (d) *Pension Act*, R.S.C. 1985, c. P-6;
- (e) *Royal Canadian Mounted Police Superannuation Act*, R.S.C. 1985, c. R-11;

- (f) *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c. 21.

**M. PLACE OF TRIAL**

62. The Plaintiff proposes that this action be tried at Toronto, Ontario.

January 25<sup>th</sup>, 2019

---

**KOSKIE MINSKY LLP**  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert** (LSUC# 309400)

Tel: 416-595-2092

Fax: 416-204-2889

**Adam Tanel** (LSUC# 61715D)

Tel: 416-595-2072

Fax: 416-204-4922

**Janeta Zurakowski** (LSUC# 75326P)

Tel: 416-595-2124

Fax: 416-204-2890

Lawyers for the Plaintiff



Court File No.

**FEDERAL COURT**

---

**PROPOSED CLASS PROCEEDING**

**JEAN-FRANCOIS PELLETIER**

Plaintiff

- and -

**ATTORNEY GENERAL OF CANADA**

Defendant

---

**STATEMENT OF CLAIM**

(Filed this 25<sup>th</sup> day of January, 2019)

---

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert** (LSUC# 309400)

Tel: 416-595-2092

Fax: 416-204-2889

**Adam Tanel** (LSUC# 61715D)

Tel: 416-595-2072

Fax: 416-204-4922

**Janeta Zurakowski** (LSUC# 75326P)

Tel: 416-595-2124

Fax: 416-204-2890

Lawyers for the Plaintiffs