

Federal Court



Cour fédérale

**Date: 20201223**

**Docket: T-119-19**

**Ottawa, Ontario, December 23, 2020**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

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

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**

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

**AND UPON** reading the Notice of Motion dated October 11, 2019 and the affidavits of: Dennis Manuge, sworn on September 16, 2019; Raymond Toth, sworn on October 10, 2019; Betty Brousse, sworn on September 20, 2019; Brenton MacDonald, sworn on October 4, 2019; Jean-Francois Pelletier, sworn on September 4, 2019;

David White, sworn on August 28, 2019; Anna Di Domenico, sworn on February 27, 2020; and, Crystal Garrett-Baird, sworn on November 30, 2020;

**AND UPON** considering the submissions of counsel for the parties;

**AND UPON** being informed of the consent of the Defendant to the terms of this Order;

**THIS COURT ORDERS that:**

1. This action be certified as a class proceeding (“Class Proceeding”) against the Defendant, Her Majesty the Queen (HMQ).
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, commonlaw partners, dependants, survivors, orphans, and any other individuals, including eligible estates of all such persons, who received, at any time between 2002 and the present, disability pensions, disability awards and other benefits from the Defendant 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 at Schedule “A”.
3. Dennis Manuge, Raymond Toth, Betty Brousse, Brenton MacDonald, Jean-François Pelletier, and David White 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 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 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 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 pensions, disability awards, and other benefits that were affected by the annual adjustment of the basic pension?
- b. If the Defendant owed the Class a duty of care, did the Defendant breach the standard of care?
- c. If the Defendant breached the standard of care, did the Class suffer damage as a result?
- d. Was the Defendant enriched by its calculation of the annual adjustment of the basic pension under section 75 of the *Pension Act*, and the disability pensions, disability awards, and other benefits that were affected by the annual adjustment of the basic pension?
- e. If the Defendant was enriched, did the Class suffer a corresponding deprivation?
- f. If the Defendant was enriched and the Class suffered a corresponding deprivation, was there a juristic reason therefor?
- g. Is the Class entitled to an award for interest and/or "equitable compensation" or "equitable damages"?
- h. Can damages for the Class be assessed in the aggregate pursuant to Federal Courts Rule 334.28?

7. The Plan of Proceeding attached hereto as Schedule “D” is hereby approved.
8. Gowling WLG (Canada) LLP, Michel Drapeau Law Office, Murphy Battista LLP, Koskie Minsky LLP, and McInnes Cooper (“Class Counsel”) are appointed to act on behalf of the Class and Class Members in this Class Proceeding and any related proceedings.
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 and VAC’s websites in both official languages;
  - b. Class counsel shall publish the Notice: in a multi-media advertisement campaign that includes publication in both official languages in at least one daily newspaper in each province and territory of Canada as well as in the national editions of the *Globe and Mail*, and *Legion Magazine*; by making best efforts to post the Notice in community centres across Canada operated by the Royal Canadian Legion; and in targeted advertisements through online platforms like Facebook and Google;
  - c. A press release shall be issued; and
  - d. HMQ shall publish the Notice in both official languages in My VAC Account for 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. Publication of the Notice shall be suspended until at least 1 March 2021, and the parties shall be at liberty to approach the Court to request a publication of a different Notice or further suspension of the publication date pending without prejudice settlement negotiations between the parties.
12. On or before 90 days following the end of the opt-out period, class counsel shall report to HMQ and the Court, the names of all class members who have opted out of this proceeding.
13. There shall be no costs on this motion for certification of a class proceeding.

"Catherine M. Kane"

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Judge

## Schedule “A”

- *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* disability award;
- *Veterans Well-being Act* clothing allowance;
- *Veterans Well-being Regulations* remuneration of an escort;
- *Veterans Health Care Regulations* remuneration of an escort;
- *Veterans Health Care Regulations* treatment allowance;
- *Veterans Review and Appeal Board Act* compassionate award;
- *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);
- *Children of Deceased Veterans Education Assistance Act* monthly allowance for education; and  
*Flying Accidents Compensation Regulations* flying accidents compensation.

## Schedule “B”

### CLASS ACTION REGARDING ANNUAL ADJUSTMENT OF BENEFITS ADMINISTERED BY VETERANS AFFAIRS CANADA

*Manuge et al. v. Her Majesty the Queen* Court No. T-119-19

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 2002 and the present, any of the awards and benefits listed at Schedule “A”, you may be a member of the Class. Eligible estates of persons who received, at any time between 2002 and present, any of the awards and benefits listed at Schedule “A” may also be class members. If the class proceeding succeeds at trial, or is settled, class members may be entitled to a payment.

#### WHAT IS THE CLASS ACTION ABOUT?

VAC administers certain benefits, which must be annually adjusted.

The Plaintiffs and the Class claim the Defendant miscalculated annual adjustment rates from 2002 to the present, resulting in underpayments to Class members. The class proceeding seeks damages for underpayments that occurred because of the calculation errors.

#### WHO ARE THE CLASS MEMBERS?

The Federal Court has defined the Class as:

All members and former members of the Canadian Armed Forces and Royal Canadian Mounted Police, and their spouses, common-law partners, dependants, survivors, orphans, and any other individuals, including eligible estates of all such persons, who received, at any time between 2002 and the present, disability pensions, disability awards and other benefits from the Defendant 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 at Schedule “A”:

- *Pension Act*: pension for disability; pension for death; attendance allowance; allowance for wear and tear of clothing or for specially made apparel; and exceptional incapacity allowance;
- *Veterans Well-being Act*: disability award; and clothing allowance;
- *Veterans Well-being Regulations*: remuneration of an escort;
- *Veterans Health Care Regulations*: remuneration of an escort, treatment allowance;

*Veterans Review and Appeal Board Act*: compassionate award;

- *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);

- *Children of Deceased Veterans Education Assistance Act*: monthly allowance for education; and

- *Flying Accidents Compensation Regulations*: flying accidents compensation.

The CAF and RCMP veterans who commenced the class proceeding and who act as representative plaintiffs on behalf of the Class are Dennis Manuge, Raymond Toth, Betty Brousse, Brenton MacDonald, Jean-François Pelletier, and David White.

#### WHAT DO I NEED TO DO TO TAKE PART?

All Class Members have the right to participate in the class proceeding. You are automatically included in the proceeding and bound by the results *unless* you opt-out. If you do *not* 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. *If you wish to opt-out*, 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 not be eligible to receive any payment from a settlement or judgment in favour of the class.

#### WHO ARE THE LAWYERS FOR THE CLASS?

The lawyers for the class (“Class Counsel”) are:

Gowling WLG (Canada) LLP (Toronto); Michel Drapeau Law Office (Ottawa); Murphy Battista LLP (Kelowna); Koskie Minsky LLP (Toronto); McInnes Cooper (Halifax).

You can obtain more information about the class proceeding at the website created by Class Counsel:

[include web details]

#### DO I NEED TO PAY ANYTHING?

You do not need to pay any legal fees. If the case is unsuccessful, there will be no legal fees. If the case succeeds, whether at trial or by settlement, counsel will be paid at their regular hourly rates for any amount recovered up to \$165 million. If the amount recovered exceeds \$165 million, Class Counsel may receive a scaled fee of up to 30% of any amounts recovered above \$165 million. The Federal Court must approve Class Counsel’s fees and any settlement of the class proceeding.

**Schedule "C"**

**OPT-OUT COUPON**

To: [Insert address to be designated by Class Counsel]

Email address: [Insert email address in reference to Common Website]

This is **NOT** a claim form. Completing this OPT-OUT COUPON will exclude you from receiving any compensation from any settlement or judgment in the Class Proceeding 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]**.*

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

Representative Plaintiffs

- and -

HER MAJESTY THE QUEEN

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: \_\_\_\_\_

\_\_\_\_\_  
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 authorized to act on behalf of the Estate.

For further information please consult the website located at: [Insert website details.]



FEDERAL COURT

B E T W E E N:

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

Plaintiffs

and

**HER MAJESTY THE QUEEN**

Defendant

**PLAINTIFFS’ PLAN OF PROCEEDING  
(*Federal Courts Rules*, Rule 334.16(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. Dennis Manuge, Raymond Toth, Betty Brousse, Brenton MacDonald, JeanFrancois Pelletier, and David White (“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 2002 to present, 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, dependants, survivors, orphans, and any other individuals, including eligible estates of all such persons, who received, at any time between 2002 and the present, disability pensions, disability awards and other benefits from the Defendant 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 at Schedule “A”.

Schedule “A”

- *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* disability award;
- *Veterans Well-being Act* clothing allowance;
- *Veterans Well-being Regulations* remuneration of an escort;
- *Veterans Health Care Regulations* remuneration of an escort;
- *Veterans Health Care Regulations* treatment allowance;
- *Veterans Review and Appeal Board Act* compassionate award;
- *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);
- *Children of Deceased Veterans Education Assistance Act* monthly allowance for education; and
- *Flying Accidents Compensation Regulations* flying accidents compensation.

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 hundreds of 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 prepared interlocutory motions, including 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 “Notice”). Publication of the Notice shall be suspended until at least 1 March 2021, and the parties shall be at liberty to approach the Court to request a publication of a different Notice or further suspension of the publication date pending without prejudice settlement negotiations between the parties.
6. Notice will be provided to members of the Class (“Class Members”) in the following manner:
  - i) Posting on Class Counsel’s and VAC’s websites in both official languages;
  - ii) Class Counsel shall publish the Notice, or an agreed-upon short form bulletin of the Notice, in a multi-media advertisement campaign that includes publication in both official languages in at least one daily newspaper in each province and territory of Canada as well as in the national editions of the *Globe and Mail*, and *Legion Magazine*; making best efforts to post the Notice in community centres across Canada operated by the Royal Canadian Legion; and targeted advertisements through online platforms like Facebook and Google;

- iii) A press release shall be issued; and
  - iv) HMQ will post the Notice in both official languages on My VAC Account for Class Members.
7. The Plaintiffs will request that the deadline for Class Members to opt-out of the Class Proceeding be 90 days following publication of the Notice on 1 March 2021, or on such later date as the parties agree or the Court orders. Opt-Out Coupons, in a form approved by the Court, will be available from Class Counsel and on Class Counsel's website.
8. The 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 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 Notice will direct Class Members to 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.
10. If the parties achieve a settlement on or before 1 March 2021, the form and method of Notice may be amended to take into account material terms of the settlement.

***Pleadings and Proposed Litigation Timetable***

11. The parties will engage in further exploratory without prejudice discussions until at least 1 March 2021.
12. Plaintiffs agree to waive the filing of a defence until Plaintiffs' counsel determine, upon written notice to the Defendant, not to be given before 1 March 2021, that without prejudice discussions have failed, and the Defendant must file a defence within 60 days of receiving such notice. Upon receiving written notice to file a defence, the Defendant may request an extension from the Court through the case management process. The parties agree 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***

13. Class Counsel will establish and maintain a publicly-accessible common website 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 the common website.
14. In addition, Class Counsel will appoint one or more lawyers from each firm to act as primary contact 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***

15. 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 by publication in the media, social media or through Class Counsel's and VAC's websites.

***Claims Process***

16. 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.

***Review of the Plan of Proceeding***

17. 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.