

Federal Court



Cour fédérale

Date: 20210416

Docket: T-972-17

Toronto, Ontario, April 16, 2021

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

PROPOSED CLASS PROCEEDING

DOUGLAS JOST

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

THIS MOTION for a redetermination of the motion for certification was heard on April 16, 2021;

UPON READING the Plaintiff's Motion Record, Memorandum of Fact and Law, Book of Authorities, Reply Memorandum of Fact and Law and Book of Authorities, Transcript, Exhibit and Undertakings Brief, and the Defendant's Responding Motion Record, Memorandum of Fact and Law and Book of Authorities, previously filed;

UPON the original motion for certification being heard on June 18, 2019;

UPON the Federal Court ordering that the class proceeding be certified pursuant to section 334.16(1) of the *Federal Courts Rules*, by Order and Reasons dated November 4, 2019;

UPON the Federal Court of Appeal ordering a redetermination of the motion for certification, by Order and Reasons for Judgment dated December 10, 2020;

AND UPON BEING ADVISED that the parties hereto consent to the form and content of this Order:

IT IS HEREBY ORDERED THAT:

[1] This action be and is hereby certified as a class proceeding pursuant to the section 334.16(1) of the *Federal Courts Rules*.

[2] The Class is defined as all individuals who:

- (a) served in the Canadian Armed Forces – Reserve Force;
- (b) released from the Canadian Armed Forces between March 1, 2007 and October 31, 2017;
- (c) were entitled to receive an Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit under the Regular Force Pension Plan or the Reserve Force Pension Plan; and
- (d) did not receive payment of the Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit for more than 60 days from the date of release.

[3] That Douglas Jost is hereby appointed the representative plaintiff of the Class as defined above in paragraph 2.

[4] Koskie Minsky LLP (“Class Counsel”) are appointed to act on behalf of the Class and Class Members in this Class Proceeding.

[5] That the Common Issues are as listed in **Schedule "A"** to this Order.

[6] The Defendant shall provide Class Counsel with a list of the name, date of birth, last known mailing address, telephone number (if known), and email address (if known) of each Class Member who satisfies the criteria set out in paragraph 2(a), (b), (c) and (d), *supra*.

[7] Class Counsel and the Defendant shall deliver notice to the Class in the form attached hereto as **Schedule “B”** (“Notice”) in the following manner:

- a. By posting the Notice on Class Counsel’s and VAC’s websites in both official languages;
- b. Publishing the Notice in *Legion Magazine* in both official languages;
- c. Issuing a press release in both official languages; and
- d. The Defendant shall publish the Notice in both official languages in My VAC Account for all Class Members who satisfy the criteria set out in paragraph 2(a), (b), (c) and (d), *supra*.

[8] 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, or email to Class Counsel by a date no later than 120 days from the date of this Order, and no Class Member may opt-out of this proceeding after that date except with leave of this Court.

[9] On or before 90 days following the end of the opt-out period, Class Counsel shall report to the Defendant and the Court, the names of all Class Members who have opted out of this proceeding.

[10] There shall be no costs on this motion for certification of a class proceeding.

"James W. O'Reilly"

Judge

SCHEDULE "A" - Common Issues

1. Does the Defendant owe a duty of care to the Class?
2. If so, what is the standard of care owed by the Defendant to the Class?
 - (e) In respect of an Immediate Annuity, is it a breach of the standard of care if the Defendant did not issue payment within 60 days of release from service?
 - (f) In respect of a Transfer Value, is it a breach of the standard of care if the Defendant did not issue payment within 60 days of release from service?
 - (g) In respect of an Annual Allowance, is it a breach of the standard of care if the Defendant did not issue payment within 60 days of release from service?
 - (h) In respect of a Bridge Benefit, is it a breach of the standard of care if the Defendant did not issue payment within 60 days of release from service?
3. Did the Defendant owe contractual obligations to the Class?
4. If so, what were the terms of the contractual obligations owed by the Defendant to the Class?
 - (a) In respect of an Immediate Annuity, is it a breach of the Defendant's contractual obligations if the Defendant did not issue payment within 60 days of release from service?
 - (b) In respect of a Transfer Value, is it a breach of the Defendant's contractual obligations if the Defendant did not issue payment within 60 days of release from service?
 - (c) In respect of an Annual Allowance, is it a breach of the Defendant's contractual obligations if the Defendant did not issue payment within 60 days of release from service?
 - (d) In respect of a Bridge Benefit, is it a breach of the Defendant's contractual obligations if the Defendant did not issue payment within 60 days of release from service?
5. Can the Class recover interest on accrued payments of Immediate Annuities, Transfer Values, Bridge Benefits and/or Annual Allowances from the 61st day following release from service?
6. Can the amount of damages for negligence, and/or breach of contract be determined on an aggregate basis? If so, in what amount?

SCHEDULE "B" – Notice

Notice of Certification Re: *Jost v. Her Majesty the Queen* Court File No. T-972-17

The Federal Court has certified a class proceeding involving delayed payment of certain *Canadian Forces Superannuation Act* pension benefits between 2007 and 2017. If you served in the Canadian Armed Forces (“CAF”), with at least some of that service in the Reserve Force, and released from the CAF between 2007 and 2017, you may be a member of the Class. If the class proceeding succeeds at trial, or is settled, you may be entitled to a payment.

WHAT IS THE CLASS ACTION ABOUT?

The class proceeding seeks damages for delay in paying pension benefits to some CAF members who served in the Reserve Force – regardless of whether they were members of the Reserve Force Pension Plan or the Regular Force Pension Plan.

WHO ARE THE CLASS MEMBERS?

The Federal Court has defined the Class as all individuals who:

- (a) served in the Canadian Armed Forces – Reserve Force;
- (b) released from the Canadian Armed Forces between March 1, 2007 and October 31, 2017;
- (c) were entitled to receive an Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit under the Regular Force Pension Plan or the Reserve Force Pension Plan; and
- (d) did not receive payment of the Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit for more than 60 days from the date of release.

The CAF member who acts as representative plaintiff on behalf of the Class is Douglas Jost.

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 the lawyers listed below. If you wish to opt-out, you must send a signed Opt-Out Coupon to the lawyers listed below by no later than August 14, 2021. 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 Koskie Minsky LLP (Toronto). You can obtain more information about the class proceeding at the website created by Class Counsel: <https://kmlaw.ca/cases/canada-forces-delayed-pension-class-action/>

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, the Federal Court must approve Class Counsel's fees and any settlement of the class proceeding.

Avis de certification concernant : *Jost c. Sa Majesté la Reine* Dossier de la Cour n° T-972-17

La Cour fédérale a certifié un recours collectif portant sur le retard de paiement de certaines prestations de retraite de la *Loi sur la pension de retraite des Forces canadiennes* entre 2007 et 2017. Si vous avez servi dans les Forces armées canadiennes (« FAC »), avez complété au moins une partie de ce service dans la Force de réserve, et avez été libéré de vos fonctions au sein des FAC entre 2007 et 2017, vous pourriez être un membre du groupe. Si le recours collectif aboutit au procès ou parvient à un règlement, vous pourriez avoir droit à un paiement.

QU'EST-CE CE RECOURS COLLECTIF ?

Le recours collectif réclame des dommages-intérêts pour le retard du versement des prestations de retraite à certains membres des FAC qui ont servi dans la Force de réserve - qu'ils ou elles soient membres du Régime de pension de la Force de réserve ou du Régime de pension de la Force régulière.

QUI SONT LES MEMBRES DE CE RECOURS ?

La Cour fédérale a défini le groupe comme comprenant toutes les personnes qui :

- (a) ont servi dans les Forces armées canadiennes - Force de réserve;
- (b) ont été libérées des Forces armées canadiennes entre le 1^{er} mars 2007 et le 31 octobre 2017;
- (c) avaient le droit de recevoir une annuité immédiate, une valeur de transfert, une allocation annuelle et/ou une prestation de raccordement en vertu du régime de pension de la Force régulière ou du régime de pension de la Force de réserve; et
- (d) n'ont pas reçu le paiement de l'annuité immédiate, de la valeur de transfert, de l'allocation annuelle et/ou de la prestation de raccordement plus de 60 jours à compter de la date de leur libération.

Le membre des FAC qui agit à titre de représentant des demandeurs au nom du Groupe est Douglas Jost.

QUE DOIS-JE FAIRE POUR Y PRENDRE PART ?

Tous les membres du groupe ont le droit de participer au recours collectif. Vous êtes automatiquement inclus(e) dans le recours et lié(e) par son résultat, sauf si vous vous en excluez. Si vous ne vous en excluez pas, vous serez admissible à recevoir tout paiement découlant d'un règlement ou d'un jugement en faveur du groupe. Vous n'avez rien à faire si vous souhaitez participer au recours.

Si vous souhaitez vous exclure, vous devez signer et soumettre un Coupon d'Exclusion fourni par les avocats désignés ci-dessous. Si vous souhaitez vous exclure, vous devez envoyer un Coupon d'Exclusion signé aux avocats énumérés ci-dessous avant le 14 août 2021. Si vous vous excluez, vous ne serez pas admissible à recevoir tout paiement découlant d'un règlement ou d'un jugement en faveur du groupe.

QUI SONT LES AVOCATS DU GROUPE ?

Les avocats représentant le groupe (les « avocats du groupe ») sont Koskie Minsky LLP (Toronto). Vous pouvez obtenir plus d'informations sur le recours collectif sur le site Web créé par les avocats du groupe : <https://kmlaw.ca/cases/canada-forces-delayed-pension-class-action/>

DOIS-JE PAYER QUELQUE CHOSE ?

Vous n'avez pas à payer de frais juridiques. Si l'affaire échoue, il n'y aura pas de frais juridiques à payer. Si l'affaire aboutit, que ce soit par procès ou par règlement, la Cour fédérale doit approuver les honoraires des avocats du groupe et tout règlement du recours collectif.

**SCHEDULE "C" – Opt Out Coupon
OPT-OUT COUPON**

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

Email address: [Insert address in reference to 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, or courier at the above address no later than August 14, 2021*

Court File No. T-972-17

DOUGLAS JOST

Representative Plaintiff

- 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: _____

Signature of Witness Signature of Class Member Opting-Out

Telephone: _____

Name of Witness: _____
Email: _____

For further information please consult the website located at:

<https://kmlaw.ca/cases/canada-forces-delayed-pension-class-action/>

COUPON D'EXCLUSION

À : [Inclure l'adresse à être désigné par l'avocat du groupe]

Adresse courriel : [Inclure l'adresse en référence du site Web]

Ceci **N'EST PAS** un formulaire de réclamation. Compléter ce COUPON D'EXCLUSION vous privera de toute compensation découlant d'un règlement ou jugement dans le cadre du recours décrit ci-dessous.

Note : Pour vous exclure, ce coupon doit être dûment complété et renvoyé aux avocats du groupe par courriel, par courrier régulier ou par messagerie à l'adresse indiquée ci-dessus d'ici le **14 août 2021.**

Dossier de la Cour n° T-972-17

DOUGLAS JOST

Demandeur représentant

- Et -
SA MAJESTÉ LA REINE

Défenderesse

En m'excluant de ce recours, je comprends que :

(3) Je ne souhaite pas participer à ce recours collectif; et

(4) J'assume l'entière responsabilité d'entreprendre toutes les mesures nécessaires pour faire valoir ou protéger toute réclamation individuelle que je pourrais avoir et tout délai de prescription pertinent.

Date : _____ Nom du membre de groupe : _____

Signature du témoin : _____ Signature du membre du recours s'excluant du recours collectif

Nom du témoin : _____ Téléphone : _____

_____ Courriel : _____

Pour obtenir plus de renseignements, veuillez consulter le site Web à l'adresse suivante :

<https://kmlaw.ca/cases/canada-forces-delayed-pension-class-action/>