



No. S-127611
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

DANIEL CHRISTOPHER SCOTT, MARK DOUGLAS CAMPBELL,
GAVIN MICHAEL DAVID FLETT, KEVIN ALBERT MATTHEW BERRY,
BRADLEY DARREN QUAST, AARON MICHAEL BEDARD

PLAINTIFFS

AND

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

RESPONSE TO FURTHER AMENDED NOTICE OF CIVIL CLAIM

Part 1: RESPONSE TO FURTHER AMENDED NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. The facts alleged in paragraphs 1, 4, 13-14, 18, 20-35, 42, 44-45, 48-59, 61-62, 64- 66, 76, 80-83, 85-98, 102, 103, 105-107, 117-119, 127-131, 138, 145, 149, 151-152, 155-156, 158, 161-164, 166, 168-171, 174, 178, 180, 182, 187-188, 192, 194, 203, 207, 209-214, 217, 222, 231-232, 240, 251-257, 260-269, 271-272, 274, 276- 280, 283-285, 287, 291, 296-298, 301, 303-304, 306-307, 309- 312, 314, 317-318, 321, 324, 329, 355-356, 358, 374, 376-377, 379, 381-382, and 384 of Part 1 of the further amended notice of civil claim are admitted.
2. The facts alleged in paragraphs 8-12, 17, 19, 36-40, 43, 60, 68-69, 73-74, 120-121, 132-135, 141-144, 146, 150, 160, 177, 179, 181, 183-186, 197-198, 201-202, 204-205, 208, 215-216, 218-221, 223-230, 233-235, 237-239, 241-250, 258-259, 270, 273, 275, 281-282, 286, 288-290, 292-295, 299-300, 302, 305, 308, 313, 315-316, 319-320, 322-323, 325-328, 330-354,

357, 364-373, 378, 380, 383, and 385-387 of Part 1 of the further amended notice of civil claim are denied.

3. The facts alleged in paragraphs 2-3, 5-7, 15-16, 41, 46-47, 63, 67, 70-72, 75, 77-79, 84, 99, 100-101, 104, 108-116, 122-126, 136-137, 139-140, 147-148, 153-154, 157, 159, 165, 167, 172-173, 175-176, 189-191, 193, 195-196, 199-200, 206, 236, and 375 of Part 1 of the further amended notice of civil claim are outside the knowledge of the defendant.

Division 2 – Defendant’s Version of Facts

A. Daniel Christopher Scott

4. The defendant admits the allegations in paragraphs 17 and 19, except that the date of the incident was February 12, 2010, not February 10, 2010.
5. As to paragraph 36, the defendant admits that on May 7, 2010 Mr. Scott made an application to the Department of Veterans Affairs Canada (“VAC”) for disability benefits, and further states that quality of life is a component of a claimant’s assessment for each disability under the Table of Disabilities.
6. As to paragraph 37, the defendant admits that Mr. Scott was assessed at 15% disability and awarded a lump sum of \$41,411.96, but denies that the lump sum was awarded “in lieu of a disability pension.”
7. The defendant admits paragraph 38, except that the assessment for laceration of left kidney was a medical impairment rating of 13 and a quality of life rating of 2, and for laceration of pancreas was “not stable for assessment.”
8. As to paragraph 39, the defendant states that Mr. Scott’s assessment letter of July 5, 2010 advised that VAC was unable to assess his disability as the laceration of his pancreas was not yet stable, and that the VAC district office would contact him in three months to arrange for a medical examination. Further medical examination/assessment decisions dated September 30, 2010 and October 12, 2010 indicated that the laceration to the pancreas was

assessed at nil. The decision stated, "If future medical examinations show a worsening of your condition, we would be pleased to review your cases again."

9. The defendant admits the allegations in paragraph 42, and further states that following his injury and return to his unit, Mr. Scott was employed as a Class C Reservist until he was deemed fit to return to his pre-deployment work or schooling. At that time, he reverted to Class A (non full time) Reservist status, as had been his status before his deployments to Afghanistan. His pay while on Class A status is based on his attendance at parades and exercises. If Mr. Scott had not been injured, he would have been maintained on Class C service for three months in any event to monitor his reintegration.
10. The defendant further states that since his return from Afghanistan in 2010, Mr. Scott has completed leadership training, trades training, and other courses in the Canadian Armed Forces ("CAF") and was promoted from Bombardier to Master Bombardier on July 17, 2012.
11. As to paragraph 43, the defendant states that Mr. Scott has continued training with the CAF since being removed from his Temporary Medical Category, and was promoted following his injury. The defendant further states Mr. Scott was referred to a gastroenterologist in March 2013 as part of the process for reassessment of his laceration of the pancreas. Mr. Scott was notified of the appointment scheduled for May 21, 2013, but advised that he was unable to attend as he was working in Alberta, and would continue to do so until September or October, 2013. The defendant denies that it has in any way failed to accommodate Mr. Scott.

B. Gavin Michael David Flett

12. As to paragraph 60, the defendant admits that Mr. Flett was assessed at 5% disability and awarded a lump sum of \$13,368.25, but denies that the lump sum was awarded "in lieu of a disability pension."
13. The defendant admits paragraph 63, but states that on July 20, 2009 Mr. Flett only sought a reassessment of his right talus fracture.

14. As to paragraph 67, the defendant admits the conclusion of the Review and Appeal Board and the decision to increase the quality of life rating by from 1% to 2% but denies knowledge of the remainder of the paragraph.
15. The defendant denies paragraph 68, and further states that an individual may seek reassessment of disability at any time. The defendant further denies that it is under any obligation to replicate the awards which might be considered by a Court in a civil claim. The defendant further pleads that it had no intention of replicating the elements of a civil claim in the benefits awarded to disabled CAF members and veterans and that the criteria used to determine damages in a civil claim are inappropriate for inclusion in any disability benefit regime.
16. As to paragraph 69, the defendant admits that mobility support was offered to Mr. Flett. The defendant denies that Mr. Flett is unable to work, but has no knowledge of his intended field. The defendant further states that Mr. Flett applied for reassessment of his disabilities. The assessment of his left femur fracture (operated) was increased to 5% and right talus fracture (operated) was increased to 11%, both effective April 11, 2013, and Mr. Flett received an additional payment of \$29,858.79. As Mr. Flett has not yet been released from the CAF, he is not yet eligible for other *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c. 21. ("New Veterans Charter" or "NVC") programs, services, or benefits. Upon release, his eligibility for such programs and benefits will be assessed.
17. As to paragraph 73, the defendant states that Mr. Flett's Class B Reserve status did end, however, he was found to meet the Universality of Service requirements and remains a member of the Reserves. He is employed at the CAF Recruiting Centre in New Westminster, B.C.
18. As to paragraph 74, the defendant states that Mr. Flett was requested to vacate his Residential Housing Unit on termination of his Class B contract. As no landlord/tenant relationship existed, he was not "evicted."

19. As to paragraph 75, the defendant admits that Mr. Flett was permitted to remain in the unit until the end of the school year. The defendant has no knowledge as to Mr. Flett's marriage or why he did not pursue an appeal of the requirement to vacate.
20. As to paragraph 77, the defendant has no knowledge of Mr. Flett's intended career or impairment in pursuing it, but states that assistance with university would be available from VAC upon release if Mr. Flett demonstrates a service related vocational rehabilitation need and if university training is appropriate to meet that need.
21. As to paragraph 78, the defendant admits the allegations therein, but has no knowledge as to Mr. Flett's credit card debt.
22. As to paragraph 79, the defendant has no knowledge as to the allegations therein, but repeats that Mr. Flett would be eligible for assistance with university from VAC upon release if Mr. Flett demonstrates a service related vocational rehabilitation need and if university training is appropriate to meet that need.

C. Mark Douglas Campbell

23. As to paragraph 104, the defendant admits that Mr. Campbell experienced mental health injuries, but has no knowledge as to his perception of their genesis.
24. As to paragraph 120, the defendant states that Mr. Campbell has VAC claims in progress for an additional 13 medical conditions. The defendant denies that the claims will be necessarily "meaningless," as they may entitle Mr. Campbell to other VAC benefits or services with a monetary value.
25. As to paragraph 121, the defendant admits the allegations therein, but states that as of January 1, 2014, Mr. Campbell's VAC Clothing Allowance has been \$187.44 per month. As a serving member, Mr. Campbell is no longer eligible to receive a benefit under the Veterans Independence Program.
26. The defendant denies paragraph 124, and states that the Permanent Impairment Allowance ("PIA") and Permanent Impairment Allowance Supplement ("PIAS") are intended to address loss of future income earning capacity, rather than offsetting additional costs

associated with disability, and as such are considered earnings replacement. Therefore, based on the estimates set out in paragraph 123, Mr. Campbell would be receiving more money on account of income replacement after release than he presently receives as salary.

27. As to paragraph 125, the defendant has no knowledge as to Mr. Campbell's future employment prospects, but states that in the event he is unable to benefit from the vocational rehabilitation program, his spouse would be eligible for this program which is designed to improve the family's earning potential.

D. Kevin Albert Matthew Berry

28. As to paragraph 132, the defendant states that Mr. Berry's medical file indicates that his injury initially appeared to affect only his right knee.
29. As to paragraph 133, the defendant states that there is no indication in Mr. Berry's medical file that he requested to cease his duties. Mr. Berry was given a stabilizing brace for his right knee in October, 2003.
30. As to paragraph 134, the defendant states that Mr. Berry has been diagnosed with right and left patellofemoral pain syndrome and hearing loss with tinnitus. There is no record of a diagnosis of osteo-arthritis.
31. The defendant admits the allegations in paragraph 135, except that the amount of Mr. Berry's *Pension Act*, R.S.C., 1985, c. P-6 disability pension was \$464.43 per month based on an April, 2009 reassessment of his disabilities. The amount is now \$778 based on a September, 2013 reassessment.
32. As to paragraph 137, the defendant admits that Mr. Berry attended the Sunshine Centre in May, 2011, but has no knowledge as to the other allegations therein.
33. The defendant has no knowledge of the majority of the allegations in paragraph 139, and further states that Mr. Berry was in periodic contact with VAC personnel since 2003 on account of his pensioned conditions. On December 29, 2009, Mr. Berry called the National Contact Centre Network ("NCCN") at VAC to inquire about applying for compensation for Post-Traumatic Stress Disorder ("PTSD"). He was sent an application. On December 30,

2009, Mr. Berry discussed his concerns with a disability benefits officer. Mr. Berry indicated that he was not in crisis and would seek a referral to a psychologist at a scheduled appointment with his family doctor on January 12, 2010. He filed his application for a disability benefit on account of PTSD in January, 2010. He spoke to an area counsellor on February 4, 2010, but not specifically on account of PTSD. On March 29, 2010, Mr. Berry called VAC to request counselling for his PTSD. VAC personnel left a message for Mr. Berry on March 31, 2010 and they spoke on April 9, 2010. At that point, VAC personnel began discussing Mr. Berry's eligibility for rehabilitation benefits and between April 9, 2010 and April 29, 2010, a VAC case manager worked with him to provide the services and support requested.

34. As to paragraph 141, the defendant states that there is no such thing as a "five-year term for Earnings Loss Benefits." A rehabilitation plan that includes an Earnings Loss Benefit ("ELB") may be for a defined period of time, but may be extended until age 65. Prior to Bill C-55, Mr. Berry's net ELB was \$2021.73. After Bill C-55, it increased to \$2,391.17. When the 2011 salary rate increase was applied, it increased to \$2,488.05. When the *Pension Act* disability offset was ceased on October 1, 2012, his net ELB increased to \$2,791.24. The defendant admits that there is no cost of living allowance on the ELB for personnel living in major cities.
35. As to paragraph 142, the defendant states that the *Pension Act* disability offset was ceased on October 1, 2012.
36. As to paragraph 143, the defendant states that if Mr. Berry gains income from other sources, his ELB would be reduced by an amount equivalent to 50% of income payable while he is participating in a rehabilitation plan or vocational assistance plan developed by VAC or 100% if he is not. Once the sum of his ELB and income reached 100% of his former salary, further income would be offset at 100%.
37. As to paragraph 144, the defendant states that Mr. Berry filed his application for a disability benefit on account of PTSD in January, 2010.

38. The defendant admits the allegations in paragraph 146, except that Mr. Berry received \$58,661.69 on April 30, 2012 and not \$56,661.68 as alleged. In addition, Mr. Berry was further reassessed on January 11, 2013, and his assessment increased to 39% disability. He received an additional payment of \$29,858.80 and can seek reassessment if his condition worsens or he may apply on account of other conditions in the future.
39. As to paragraph 148, the defendant admits that Mr. Berry was released in 2004, but has no knowledge of the balance of the allegations in that paragraph.
40. The defendant admits the allegations in paragraph 149, but states that Mr. Berry will have the option to apply for reassessment or to make application for other conditions in the future. The defendant further states that Mr. Berry has not applied for SISIP LTD benefits.

E. Bradley Darren Quast

41. As to paragraph 160, the defendant admits that Mr. Quast sustained injuries to his right leg, foot, and ankle and that he later developed back pain while in hospital.
42. As to paragraph 167, the defendant admits that Mr. Quast was posted to the Joint Personnel Support Unit in Edmonton, but has no knowledge as to his moving his residence.
43. As to paragraph 170, the defendant admits that Mr. Quast was scheduled for further surgery in April, 2013, but has no knowledge of whether the surgery took place.
44. As to paragraph 172, the defendant admits that Mr. Quast suffers from daily pain, but has no knowledge of his use of medication.
45. As to paragraph 177, the defendant denies the existence of a "Permanent Medical Category" and states that permanent medical employment limitations have been imposed on Mr. Quast.
46. As to paragraph 179, the defendant admits the allegations therein, except that the disability award is not awarded "in lieu of a disability pension."
47. As to paragraph 181, the defendant states that Mr. Quast filed a further application for disability assessment on July 21, 2010, but the claim did not include PTSD or major

depressive disorder. His claims for knee injuries were withdrawn. His claim for PTSD and depression was filed September 22, 2011.

48. As to paragraph 183, the defendant states that the reason Mr. Quast's claim for psychological injuries was initially denied was that his file lacked diagnostic information on mental health conditions. VAC provided Mr. Quast with documents in order to help him obtain the necessary information.
49. As to paragraph 184, the defendant states that Mr. Quast was informed by letter dated May 10, 2012, that he qualified for a disability award of \$102,657.94. This letter included information on the key evidence considered and the portions of the Table of Disabilities used by VAC in reaching this assessment.
50. As to paragraph 185, the defendant admits that Mr. Quast was required to participate in a medical assessment, as he requested a reassessment of his disability, but denies that "VAC is not satisfied that it has enough information." On the contrary, at the time of Mr. Quast's last assessment January 14, 2013, based on the information in VAC's possession, his disability was assessed at 71%. The defendant admits that Mr. Quast will be required to participate in ongoing medical assessments, but states that the ongoing assessments relate to changes in disability.

F. Aaron Michael Bedard

51. As to paragraph 190, the defendant denies knowledge of the injuries suffered by the other soldiers and how they were evacuated but admits the remainder of the paragraph.
52. As to paragraph 191, the defendant admits that Mr. Bedard suffered headaches and whiplash, but has no knowledge as to his reasons for staying in Afghanistan.
53. As to paragraph 195, the defendant admits that Mr. Bedard returned from Afghanistan in August 2006. The defendant further states that Mr. Bedard was treated with Tylenol II in Afghanistan, but has no knowledge as to other treatment in theatre or other use of painkillers.

54. As to paragraph 196, the defendant has no knowledge as to an order to be examined. The defendant further states that Mr. Bedard was diagnosed in January, 2007 as having sustained a neck injury and in July, 2008 with a traumatic brain injury. Various drugs were tried, before Mr. Bedard started taking Gabapentin in April, 2008.
55. As to paragraph 197, the defendant denies that Mr. Bedard was deemed unfit for duty in August, 2007. The defendant admits that Mr. Bedard was diagnosed with PTSD and substance abuse problems in October, 2007. The defendant has no knowledge of the balance of the allegations in paragraph 197, and further states that Mr. Bedard took part in the Drink Wise Program in February, 2007. After his diagnosis, he spent some time on sick leave and some time working half days until he transferred to the Joint Personnel Support Unit.
56. As to paragraph 198, the defendant states that Mr. Bedard was medically released on March 17, 2010.
57. As to paragraph 201, the defendant states that between September and November of 2007, Mr. Bedard made application to VAC for disability benefits. The claim was for muscle contraction headaches, cervical strain, and PTSD, but did not include traumatic brain injury.
58. As to paragraph 202, the defendant states that in a series of decisions and assessments between May, 2008 and February, 2010, Mr. Bedard's disabilities were assessed at 75% and he was awarded \$199,764.90. He was later assessed an additional 5% for lumbar disc disease and awarded a further \$14,929.40, for a total of \$214,694.30.
59. As to paragraph 205, the defendant states that Mr. Bedard currently receives \$43,773 per year in Long Term Disability benefits under SISIP, until age 65 if he remains totally disabled. In addition, since October 28, 2013, Mr. Bedard has been in receipt of a Permanent Incapacity Allowance, currently \$574.89 per month gross, and since November 13, 2013, he has been in receipt of a Permanent Incapacity Allowance Supplement, currently \$1,056.96 per month gross.

G. Canada's Covenant to Service Members and Veterans

60. With respect to paragraphs 227 and 228, the defendant admits the accuracy of the quoted statements but pleads that these statements were political speeches not intended as commitments or solemn commitments.
61. As to paragraph 229, the defendant admits the content of the legislation referred to but denies that this reiterates or recognises any alleged social contract or social covenant with the attributes pleaded by the plaintiffs.
62. As to paragraph 233, the defendant admits that items (a) to (e) are accurate quotes from the report entitled "Moving Forward: A Strategic Plan for Quality of Life Improvements in the Canadian Forces" but denies that they are an articulation of any alleged social contract with the attributes pleaded by the plaintiffs.
63. As to paragraph 235, the defendant admits the accuracy of the quote but denies the allegation that ultimate responsibility belongs to Parliament and to public opinion not just to the government of the day.

H. The Developing Role of Canada's Armed Forces

64. As to paragraph 270, the defendant denies the specific numbers referenced but admits that these numbers are reasonable estimates.
65. The defendant admits the allegations in paragraph 273, with the exception of the alleged rationale behind the reduction in Canada's NATO commitments and the omission of Canada's continued naval commitments to NATO.
66. As to paragraph 275, the defendant states that the remaining Canadian NATO forces were downsized and not withdrawn as alleged. The defendant admits the remainder of the allegations in this paragraph.

I. Pension Act

67. As to paragraph 288, the defendant admits that the *Pension Act* was developed following World War I and has been amended. The *Pension Act* was not designed “with the assumption that those serving in the military were ‘career soldiers.’” The *Pension Act* disability pension was designed to compensate for pain and suffering as well as to provide compensation for economic loss.
68. The defendant admits the allegations in paragraphs 289, 290, 292, 293, 294, and 295 but states that the Consumer Price Index is not the only factor in the indexation of benefits, and states that the name of the benefit in paragraph 293 is “Attendance Allowance.”

J. Service Income Security Insurance Plan

69. The defendant admits the allegations in paragraph 299, except that SISIP is a division of the Canadian Forces Morale & Welfare Services.
70. The defendant denies the allegations in paragraph 300, and states that SISIP Policy 901102 is not an Administrative Services Only plan, but rather an insured plan underwritten on an experience rated basis by Manulife Financial.
71. The defendant denies the allegations in paragraph 302, and states that the Maritime Life Assurance Company initially insured (rather than “managed”) SISIP. Manulife Financial continues to insure (rather than “administer”) SISIP, and receives premiums (rather than “fees”) for the insurance services provided.
72. The defendant admits the allegations in paragraph 305, except that SISIP LTD benefits are reduced by amounts under the *Canadian Forces Superannuation Act*, primary benefits under CPP/QPP, and employment income.
73. The defendant admits the allegations in paragraph 308, except that SISIP LTD premiums were initially paid entirely by CAF members. Treasury Board commenced paying 50% of premiums for all members on December 1, 1971. The April 1, 1993 change to an 85% / 15% split affected Regular Force and eligible Reserve Force members. On December 1, 1999, Treasury Board assumed 100% of premiums for eligible Reserve Force members.

74. As to paragraph 315, the defendant states that the *Manuge* class is currently defined as:

All former members of the Canadian Forces whose long-term disability benefits under S.I.S.I.P. Policy No. 901102 were reduced by the amount of their VAC disability benefits received pursuant to the *Pension Act* from June 1, 1976 to [October 16, 2013].

75. As to paragraph 316, the defendant states that the *Manuge* class could include those who received both a *Pension Act* disability pension and a disability award under the NVC.

K. The New Veterans Charter

76. As to paragraph 323, the defendant states that the lump sum disability award was not established “in lieu of disability pensions” but was rather designed to replace the pain and suffering component of the disability pension, while the NVC created a suite of other benefits to address financial compensation and reintegration.

77. As to paragraph 325, the defendant states that the disability award is not “pro-rated” but rather determined on the basis of a disability assessment ranging from 1-100%.

78. The defendant denies paragraph 326, and states that the lump sum disability award is intended to compensate for pain and suffering and that other benefits available under the NVC are designed to address economic loss, retraining, and reintegration.

79. As to paragraph 327, the defendant states that the NVC was stated to be a “living charter” and that a review was contemplated within two years. A review was begun in 2007 and was completed in 2009. When the NVC was amended in 2011, a provision was added requiring a review of the enhancements contained in those amendments within two years. The Parliamentary Review of the NVC and enhancements is currently ongoing.

80. As to paragraph 330, the defendant states that the 2011 enhancements to the NVC were in part a response to complaints voiced by advisory groups. These enhancements were intended to enhance the level of support and services for the most seriously ill and injured veterans. The enhancements changed the base salary for the ELB to that of a basic corporal for Regular Force members and \$2,700 per month for Reserve Force members, introduced

the PIAS of \$1,000 per month for the most seriously injured or ill veterans, and allowed those assessed at 5% or greater disability to take a lump sum, periodic payments, or some combination of the two. In addition, the 2011 amendments to the NVC improved access to the PIA and the Exceptional Incapacity Allowance for seriously ill or injured veterans. The result of these amendments is that currently an eligible seriously disabled veteran with regular force service who is totally and permanently incapacitated could receive a minimum of \$62,008.20 annually from VAC to alleviate their economic loss.

81. As to paragraph 333, the defendant states that reimbursement of up to \$500 for financial counseling is available per award or benefit received.
82. As to paragraphs 334 and 349, the defendant states that the lump sum disability award was not designed to compensate for future wage loss, loss of capacity, or future cost of care. The other NVC programs and benefits, including the Rehabilitation Program, ELB, PIA, and PIAS are intended to address the economic losses potentially incurred by disabled CAF veterans. Future care costs associated with service related disabilities are addressed through the various programs available to eligible CAF veterans (such as Treatment Benefits and Veterans Independence Program) under the Veterans Health Care Regulations.
83. The defendant denies paragraph 339 and states that the potential to be medically released from the CAF has not changed since the NVC was enacted.
84. As to paragraph 340, the defendant states that those injured on Class C service are supported by the NVC programs to the same extent as if they were members of the Regular Force.
85. As to paragraph 342, the defendant states that disabilities were assessed in the same way under the Table of Disabilities in the *Pension Act* regime. The defendant further states that there is no limit on the duration of a rehabilitation plan.
86. As to paragraph 346, the defendant states that in any compensation scheme, a claimant is required to support their claim with evidence. However, under the NVC, unlike in a court or under a workers compensation scheme, the "benefit of the doubt" principle is applied generously in determining entitlement.

87. As to paragraph 347, the defendant states that until a condition is stabilized, it cannot be accurately assessed. The intent of providing an initial assessment of 10%, such as in cases of PTSD, is to provide some benefit to the veteran as quickly as possible.
88. As to paragraph 348, the defendant states that the 100% cap on disability assessments does not "arbitrarily deem injuries not to exist." Additional disabilities are routinely assessed after the 100% is exceeded in order to preserve entitlement to VAC programs, benefits, and services, even if no further Disability Award is payable.
89. As to paragraph 349, the defendant reiterates that the Disability Award is only one component of the suite of services, benefits, and programs available to a veteran who becomes disabled as a result of a service related injury. The Disability Award was intended to compensate for non-economic losses, consequently it is not the only compensation provided.

L. Table of Disabilities

90. As to paragraph 357, the defendant states that the Table of Disabilities was in fact issued under the authority of the Minister of Veterans Affairs Canada.
91. As to paragraph 365, the defendant states that it is the *Pension Act* and New Veterans Charter that provide disability benefits are payable up to a maximum award of 100%.
92. As to paragraph 366, the defendant states that benefits, such as Treatment Benefits, may be paid in relation to conditions where the total disability assessment exceeds 100%.
93. As to paragraph 367, the defendant states that Schedule 3 of the New Veterans Charter outlines payments per level of assessment and that the "capped" amount does not apply under the *Pension Act*.
94. As to paragraph 370, the defendant denies that there are "arbitrary and artificial limitations" with respect to the Table of Disabilities and instructions.

M. Reports that have Identified the Failures of the New Veterans Charter

95. As to paragraph 380, the defendant admits that the New Veterans Charter Advisory Group prepared a report titled, "The 'Living' Charter in Action: Honouring Our Commitment to Veterans and Families" in June 2009 but denies the remainder of the paragraph.
96. As to paragraph 383, the defendant states that the House of Commons Standing Committee made the following recommendation:

That by November 1, 2010, Veterans Affairs Canada present to the Standing Committee on Veterans Affairs a plan with options for a new system of Disability Awards where the severity and nature of the disability, and the age and circumstance of the soldier or veteran, are taken into account on a case by case basis through a combination of lump sum payments, annuities and/or structured settlements.

97. As to paragraph 386, the defendant states that core policy decisions require the balancing of priorities, including how resources are to be allocated.

Division 3 – Additional Facts

N. "Social Covenant"/"Social Contract"

98. The government expresses its care for veterans through legislation intended to provide an appropriate level of benefits and services to disabled veterans.
99. The plaintiffs plead, in essence, that a social covenant exists between them and the government, which by virtue of the "Honour of the Crown", creates a fiduciary duty on the government's part under which it is obliged to place the interests of disabled veterans above the interests of all other Canadians and as a result of which the government is prohibited from legislating so as to effect any policy change in regard to their compensation and treatment. The defendant pleads that there is no written, defined, or articulated "social

covenant” or “social contract” between members of the CAF and the government and people of Canada which has those attributes.

100. The defendant further pleads that at no time in Canada's history has any alleged “social contract” or “social covenant” having the attributes pleaded by the plaintiffs been given effect in any statute, regulation, or as a constitutional principle, written or unwritten.
101. The terms “social covenant” and “social contract” have been used at various points in time by a number of different groups and in a number of different ways to describe the relationship between members of the CAF and the government and people of Canada. No set of principles exist that can be stated with certainty, understood with clarity, or accepted with unanimity among the people of Canada to define a “social contract” or “social covenant” as alleged.
102. The defendant pleads that the relationship between members of the CAF and the government and people of Canada involves a social policy question that has been and will continue to be answered in different ways by different governments at different times.
103. The defendant pleads that the statements made by Sir Robert Borden and the coalition government in 1917 were political speeches that reflected the policy positions of the government at the time and were never intended to create a contract or covenant. It is further pleaded that at no time were these statements intended to bind future governments and, in any event, the principle of parliamentary sovereignty would have prevented such a result had it been intended.
104. Following World War One, the policy position of Sir Robert Borden and the coalition government on the issue of Canada's relationship with veterans evolved, as did the policy position of subsequent governments. The defendant pleads that parliament, within the bounds of constitutional limits, has the unfettered discretion to change or reverse any policy set by a previous government.
105. The defendant pleads that it is necessary as government programs and policies develop and change over time that the relationship between members of the CAF and the government also evolve.

O. Honour of the Crown

106. The defendant pleads that the principle of “the Honour of the Crown” has no application to the factual allegations made by the plaintiffs.
107. The defendant further pleads that even if the principle of the Honour of the Crown required the defendant to consult and discuss the New Veterans Charter with the plaintiffs prior to its enactment, which is not admitted but expressly denied, that the defendant would have met this requirement through the extensive consultation process that it undertook. The details of that consultation are pleaded at paragraphs 115 – 126 below.
108. The defendant pleads that the principle of the Honour of the Crown is not a fundamental principle underlying the Canadian constitution and is not capable of invalidating otherwise valid legislation.
109. The defendant pleads that the principle of the Honour of the Crown is not capable of giving rise to a fiduciary duty, either in fact or in law.
110. The defendant further pleads that the Crown has not assumed discretionary control over any specific interests of the plaintiffs capable of giving rise to a fiduciary duty, either in fact or in law.

P. Origins of the *Pension Act*

111. The *Pension Act* was passed in 1919 to compensate individuals who were injured during the First World War, who had left civilian life to become soldiers until the end of hostilities, and who fully intended to return to their civilian lives at the conclusion of the war.
112. The initial design of the *Pension Act* was suited to the consequences of the First and Second World Wars where hundreds of thousands of citizens were required to participate in the military over a relatively short period of time before returning to their pre-war civilian lives.

Q. Pension Act Benefits

113. The central benefit under the *Pension Act* was the disability pension. This monthly pension was designed to compensate for pain and suffering as well as to provide financial compensation for lost income, however, the amounts awarded could be quite small, and bore little relationship to the loss of income and continuing financial needs of the individual.
114. One of the identifying characteristics of a *Pension Act* pension was that the pension served as the main “gateway” to other VAC programs such as Treatment Benefits, long-term care, and the Veterans Independence Program, as well as the benefits identified by the plaintiffs in paragraphs 290 – 296 of their further amended notice of civil claim. These other benefits were not available to those who were not in receipt of a disability pension.

R. Development of the New Veterans Charter

115. Since approximately the mid-1950s, the nature and duration of the military career has increasingly varied. Leading up to the early 1990's, the military was often an initial career to be followed by a transition to civilian life and a new career.
116. During the 1990's, there were reductions in the capacity of the CAF as a result of budgetary restraints as well as an increase in the number and complexity of military operations. These factors resulted in difficulties in recruiting soldiers along with a growing exodus of highly trained individuals from the CAF.
117. In response, Canada began to study the matter and commissioned a series of reports that indicated that, among other issues, there were problems with disability benefits and with the transition from military life to civilian life and that these issues were impacting the recruitment and retention of personnel.
118. In 1996, VAC launched the Review of Veterans Care Needs (“RVCN”) to ensure programs were focused on current and future needs of veterans. The first two phases of the review involved an examination of aging wartime veterans while the third phase focused on the needs of modern veterans.

119. The RVCN gathered information in part through direct consultations with CAF members and their families.
120. The RVCN phase three report, dated February 2000, yielded 28 key findings, including that the pension process was an overused and inappropriate tool with which to address many client needs. It found many CAF members and their families lacked appropriate transition services to help them adjust to civilian life. It also noted that VAC staff needed to be better equipped to communicate with and serve veterans and CAF members.
121. The RVCN reports determined that veterans' benefits needed to be modernised, which required a shift in culture for VAC, moving from what had become a model of delivery of benefits to aging veterans to a model of case management aimed at encouraging and supporting younger veterans as they re-establish themselves in civilian life.
122. Subsequent to these reports, VAC created an advisory council called the VAC-Canadian Forces Advisory Council ("VAC-CFAC"). The VAC-CFAC undertook research, dialogue, and consultation with numerous VAC, Department of National Defence ("DND"), and other government stakeholders. The VAC-CFAC also consulted directly with CAF members and their families and with the following veterans' groups:
- Gulf War Veterans Association of Canada
 - Canadian Peacekeeping Veterans Association
 - Army, Navy and AirForce Veterans in Canada
 - Royal Canadian Legion
 - National Council of Veterans Associations
 - Canadian Association of Veterans in UN Peacekeeping.
123. Concerns were raised that the transition process from military to civilian life was inadequate and the support for CAF and veterans' families was insufficient under the *Pension Act* regime.
124. Throughout the consultation process, one of the main observations of monthly disability payments under the *Pension Act* was that they encouraged a focus on illness and disability,

not wellness. The VAC-CFAC also observed that *Pension Act* pensions and piecemeal assistance via the disability pension gateway did not encourage wellness and were inconsistent with the principles of modern disability management which advocate early intervention, achieving maximum functioning level, and comprehensive integrated case management.

125. The conclusion of the VAC-CFAC was that a fundamental paradigm shift was required, from a focus on illness and dependence under the *Pension Act* to a new focus on wellness and independence.
126. Consequently, VAC launched a Service and Program Modernization Task Force (“the Task Force”) to develop a comprehensive and improved suite of programs and services to aid the successful transition of CAF members and their families to civilian life.
127. The work of the Task Force ultimately led to the creation of the New Veterans Charter, which was enacted in May 2005 and came into force on April 1, 2006.
128. With the support and encouragement of all stakeholders, including veterans and active members of the CAF, the NVC was adopted in the House of Commons without amendment or debate as a result of a unanimous motion to prevent the bill from dying on the Order Paper and delaying the implementation of its provisions.
129. The change from the *Pension Act* regime to the New Veterans Charter was intended to be a long-term cost neutral process. The implementation of the New Veterans Charter represented a core policy decision to reallocate resources to achieve increased wellness and productivity.
130. The NVC was intended as a “living charter” that will evolve with the changing needs of veterans and their families. To this end, various advisory groups were established to assist the government in making any amendments that might prove necessary. A first review of the New Veterans Charter was completed in 2009 and on October 3, 2011, the first such amendments became law when the provisions of *An Act to Amend the Canadian Forces Members and Veterans Re-Establishment and Compensation Act and the Pension Act*, short title, *Enhanced New Veterans Charter Act*, S.C. 2011, c. 12 came into force. These

amendments also included a provision requiring a comprehensive review of these enhancements by a committee of the Senate or the House of Commons within two years. This Parliamentary review of the NVC is currently ongoing.

131. The House of Commons Standing Committee on Veterans Affairs, which is currently undertaking a comprehensive review of the NVC, the Standing Senate Committee on National Security and Defence Subcommittee on Veterans Affairs, and the Veterans Affairs Ombudsman continue to examine the provisions of the New Veterans Charter to ensure that they meet the changing needs of veterans and members of the CAF.

S. General Overview of NVC Regime

132. The NVC regime comprises numerous benefits, some with easily quantifiable monetary values, and some that are not easily monetized, such as counseling, case management, career, and support services. The benefit regime is set out in four parts, and unlike the *Pension Act* regime, provides separate and distinct benefits to recognize the non-economic and economic impacts associated with a service related or career ending injury or illness.

133. A central component and benefit of the NVC is case management support as a CAF veteran transitions from a culture of dependence (military life) to one of independence (civilian life). Case management is a non-monetary benefit. The objective of case management is to facilitate the transition from a life of directed dependence in the military to one of independence and self-determination in civilian life. Rehabilitation is supported by case management.

134. Part 1 is entitled "Career Transition Services." It assists eligible individuals to obtain civilian employment by paying for or reimbursing a veteran for the provision of career transition services up to a lifetime maximum of \$1000, including taxes. Career Transition Services are career counseling, job-search training, and job-finding assistance that are delivered by a provider who is primarily engaged in the business of providing career transition services.

135. The Career Transition Services program is open to Regular Force members who apply within two years of release, Reserve Force members who have served 21 of 24 consecutive

months of full-time (Class C) service who apply within two years of release, Reserve Force members who have completed Special Duty Service (such as Afghanistan) and who apply within two years of release, and veterans to whom a Canadian Forces Income Support ("CFIS") benefit is payable. (There is no time limitation for making an application for Career Transition Services in this case.) Career Transition Services are available to any eligible veteran, not just those who were injured in service. No comparable program existed under the *Pension Act*.

136. Survivors of CAF veterans are eligible for this benefit if they apply within two years after the death of a veteran if the veteran was either a Regular Force veteran who had completed basic training and died within two years of release, or the veteran was a Reserve Force veteran who had completed Special Duty Service and died within two years of release.
137. Survivors of CAF members are eligible if they apply within two years of the death of the member, and the member was a Regular Force member, a Reserve Force member who, at the time of death, had completed or committed in writing to at least 21 months of full-time service during 24 consecutive months, or a Reserve Force member who completed Special Duty Service. Survivors to whom the CFIS benefit is payable are also eligible for Career Transition Services and there is no time limit for applying.
138. Part 2 is entitled "Rehabilitation Services, Vocational Assistance, and Financial Benefits," and sets out the range of programs and financial benefits for those who are released for medical reasons and those who have service-related rehabilitation needs, as well as their eligible spouses or common law partners and survivors.
139. Rehabilitation Services refers to all services related to the medical, psycho-social, and vocational rehabilitation of a person. The medical, psycho-social, and vocational services that are part of rehabilitation services will be included in a rehabilitation plan. Examples of medical rehabilitation services include physiotherapy services, prosthetics, and medications. Examples of psycho-social rehabilitation services include psychological counseling and pain management programs. Examples of vocational rehabilitation services include vocational counseling and training.

140. The Rehabilitation Program is available to all medically-released veterans, with some exceptions for certain Reserve groups. Veterans who are not eligible for rehabilitation services on the basis of a medical release status, but who have a physical or mental health problem primarily resulting from service in the CAF that is creating a barrier to re-establishment are eligible for rehabilitation services. This includes veterans with rehabilitation needs who may have a disability pension under the *Pension Act*. In addition, the Rehabilitation Program is available to spouses, common law partners in certain circumstances, and survivors.
141. Often, rehabilitation programs will involve multiple service providers from different agencies, organizations, and private providers, which are coordinated by a case manager within VAC.
142. Prior to the NVC, the only rehabilitation program available was vocational rehabilitation through SISIP for those medically released. There was no provision for comprehensive rehabilitation, including medical or psycho-social rehabilitation. No programs were available for spouses or survivors.
143. Vocational rehabilitation is designed to identify and achieve appropriate vocational goals for a person, given the extent of disability, education, skills, and experience. To support successful vocational rehabilitation under the NVC, participants can be reimbursed for training and related costs to a maximum of \$75,800, in addition to childcare costs related to training.
144. Economic loss is recognized by four financial benefit programs under Part 2: the ELB, the Supplementary Retirement Benefit, the CFIS benefit, and the PIA and PIAS.
145. Eligible veterans in receipt of the PIA may receive an increase to this allowance (the PIAS) if they are determined to be totally and permanently incapacitated. Totally and permanently incapacitated is defined as "unable to engage in suitable gainful employment as a result of the condition for which a veteran is approved for rehabilitation." Suitable gainful employment is employment that provides at least 66 2/3% of a person's monthly pre-release military salary.

146. An ELB is payable during participation in VAC's Rehabilitation or Vocational Assistance Program. The ELB is taxable and indexed to account for increases in the cost of living, to a maximum of 2% per annum. The ELB is calculated at 75% of "imputed income," less offsets from other sources of funds. Imputed income is usually the greater of the adjusted monthly military salary at release, or a guaranteed minimum income level. For veterans with Regular Force, Class C, or Class B long-term service, the minimum monthly imputed income is equal to the current salary for a basic corporal in the standard pay group (currently \$4714/month.) For veterans with Class A Reserve Service or Class B Reserve Service of no more than 180 days, the minimum monthly imputed income is currently \$2,700.
147. If a veteran is determined to be totally and permanently incapacitated, and therefore unable to engage in suitable gainful employment as a result of the health problem for which they were approved for rehabilitation, the ELB will continue to age 65, or until the veteran becomes able to gain suitable and gainful employment, with the objective of compensating for the earnings lost due to injury or illness.
148. An ELB may be paid to the survivor or orphan of a CAF member or veteran if the member or veteran dies as a result of a service-related injury or disease, or a non-service-related injury or disease that was aggravated by service.
149. The Supplementary Retirement Benefit ("SRB") recognizes the decreased ability of disabled veterans or their survivors to save for retirement. No such benefit existed under the *Pension Act* regime. The SRB is paid to those veterans who are determined to be totally and permanently incapacitated and whose eligibility for the ELB ends either because they have reached age 65, or because they have become able to gain suitable and gainful employment.
150. The SRB is a taxable lump sum calculated as 2% of the total ELB that would have been paid during the period when the veteran was in receipt, if no reduction for offsets had been made. The SRB is payable to certain survivors whose ELB ends.
151. The CFIS benefit is available to eligible veterans who are no longer entitled to earnings loss and are capable of working, but who are not yet employed. It is a non-taxable benefit comparable to the benefit under the *War Veterans Allowance Act*. The benefit is income-

tested against the total income of the veteran and spouse or common-law partner, and additional amounts are payable in respect of dependent children. The CFIS is indexed for inflation. This benefit may be payable to survivors and orphans if they meet income and eligibility requirements. Effective January 1, 2014, the CFIS rates are \$1,410.78 for a single veteran, \$2,139.65 for a veteran with spouse, \$329.63 for each dependent child, and \$706.58 for each orphan.

152. The PIA is payable for life to eligible CAF veterans who suffer from a permanent and severe impairment for which rehabilitation services have been approved and for which the veteran has received a Disability Benefit (Disability Pension or Disability Award.) The PIA recognizes the lost opportunity effects that a service related, permanent, severe impairment will have on employment potential and career advancement opportunities. Monthly allowances range from \$574.89 to \$1724.65 (2014 rates), are taxable, and are indexed for inflation.
153. Eligible veterans may receive an increase to the PIA, often referred to as the PIAS. The PIAS is a \$1,056.96 per month (2014 rate) taxable supplement to provide additional financial support to the most seriously ill or injured recipients of the PIA who are determined to be totally and permanently incapacitated.
154. An applicant may request a first level review of any decision that impacts on the applicant's entitlement to a service or benefit made under Part 2 within 60 days of receiving notice of the decision. An applicant may request a second level review within 60 days of receiving notice of the decision. The 60 day time limit can be extended when there are circumstances beyond the control of the applicant that necessitate a longer period.
155. Part 3 of the NVC comprises the Disability Award, Death Benefit, Clothing Allowance, and Detention Benefit, and is designed to compensate CAF members, veterans, and their survivors for the non-economic impacts of service related disability or death.
156. The Disability Award ("DA") is paid in recognition of pain and suffering, physical and/or psychological loss, functional impairment, and impact on the member's or veteran's overall quality of life and the impact on the lives of the member's or veteran's family. Since 2011,

for individuals assessed with a disability of 5% or greater, the DA can be paid as a lump sum, in periodic payments, or some combination of these.

157. The DA is a tax-free payment, based on the extent of disability.
158. As under the former *Pension Act* regime, a veteran makes application to VAC to have a disability assessed by an adjudicator, based on medical evidence and the Table of Disabilities. Reassessments of disability are permitted at any time. The DA is currently capped at \$301,275.26.
159. The Death Benefit is a lump-sum payment to recognize and compensate a survivor for the non-economic impacts of a sudden service-related death, such as resulting loss of guidance, care, and companionship, and the impact of the member's death on the functioning of the household. The Death Benefit is currently \$301,275.26.
160. The Clothing Allowance available under the former *Pension Act* regime remains unchanged.
161. The Detention Benefit is comparable to the Prisoner of War compensation under the *Pension Act*.
162. Unlike under the *Pension Act* regime, a veteran does not need to qualify for the DA before being eligible for other benefits, meaning that earlier intervention for rehabilitation and reintegration is possible.
163. For decisions under Part 3, review and appeal rights are available to applicants through the Veterans Review and Appeal Board. The Bureau of Pensions Advocates offers free legal advice and representation.
164. Part 4 of the NVC establishes the Health Benefits Program, which offers eligible veterans and certain survivors access to group insurance under the Public Service Health Care Plan. Participation is voluntary and complements other available medical coverage for needs stemming from an injury or illness related to service.

Part 2: RESPONSE TO RELIEF SOUGHT

165. The defendant consents to the granting of the relief sought in none of the paragraphs of Part 2 of the further amended notice of civil claim.
166. The defendant opposes the granting of the relief sought in all of the paragraphs of Part 2 of the further amended notice of civil claim.
167. The defendant takes no position on the granting of the relief sought in none of the paragraphs of Part 2 of the further amended notice of civil claim.

Part 3: LEGAL BASIS

168. The defendant opposes the granting of the relief sought by the plaintiffs on the following legal basis.

T. Honour of the Crown

169. The defendant pleads that there are no similarities between the origin, foundation, and history of the Honour of the Crown doctrine as it is known in Canadian law and the way in which the plaintiffs seek to apply it in this action. Extending the doctrine of the Honour of the Crown to Canada's relationship with members of the CAF would require a monumental change in the law.
170. The defendant pleads that the evolution of the law as it relates to Honour of the Crown remains confined to the Aboriginal context. Any application outside of the Aboriginal context would require a dramatic shift, not an evolution.
171. The defendant pleads that the Honour of the Crown cannot therefore be extended to encompass the relationship between Canada and members of the CAF.

U. Parliamentary Sovereignty

172. Even if the doctrine of the Honour of the Crown could be said to extend to the relationship between Canada and members of the CAF (which is denied) the doctrine cannot be used to invalidate legislation. The defendant pleads that any attempt to use the Honour of the Crown to invalidate legislation would violate the principle of parliamentary sovereignty.

173. The defendant pleads and relies upon section 42(1) of the *Interpretation Act* R.S.C. 1985, c. 1-21, which states:

42. (1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

174. The defendant further pleads that parliamentary sovereignty negates the doctrine of legitimate expectations as a government cannot be bound by the undertakings of its predecessor.

175. The plaintiffs' claim attempts to circumvent the principle of parliamentary sovereignty by alleging that the "Honour of the Crown is one of the fundamental principles underlying the Canadian constitution." The defendant pleads that the proposition that this unwritten constitutional principle exists is unsupported at law.

176. The defendant pleads that Section 52 of the *Constitution Act, 1982* provides that: "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect." However, for a law to be declared of no force or effect, it is essential that a "provision" of the Constitution with which it is inconsistent be identified. Absent the *Charter* claims, which will be addressed below, the plaintiffs have not identified any provision of the Constitution with which the legislation is said to be inconsistent.

V. Fiduciary Duty

177. It is pleaded that to establish a fiduciary duty in the government context, one must first identify a government commitment that supports the existence of an undertaking by government to act with undivided loyalty towards one person or group.
178. The defendant pleads that nowhere in the Claim is there any indication of a forsaking by the defendant of the interests of all others in favour of those of the plaintiffs. The government owes duties and obligations to many groups of individuals who compete for resources, not to mention the duty that it owes to act in the best interests of society as a whole. Deciding how to fund various groups and programs requires constant balancing of competing interests among all segments of the population.
179. Absent a forsaking of all other interests, the plaintiffs' interest is simply one of many that must be balanced and prioritized.
180. In the within action, the plaintiffs seek to establish a fiduciary duty related to "their right and entitlement to the services and benefits required by Canada's covenant..." Those services and benefits are currently set out in the provisions of the NVC and the Table of Disabilities and formerly under the *Pension Act*. This involves a legislative function of government.
181. The defendant pleads that Parliament, in passing legislation, can never be said to be subject to a fiduciary duty to act only in the interest of a specific group, and without regard to the interests of the broader Canadian public. Fiduciary duties do not arise in respect of the government's exercise of its legislative functions.
182. The defendant does not deny that a veteran's ability to meaningfully survive after discharge is a very serious concern but pleads that it does not invoke a specific private law interest involving a pre-existing, distinct, and complete legal entitlement and cannot of itself bring the plaintiffs' allegations within the parameters required for a finding of a fiduciary duty. The defendant pleads that no specific pre-existing, distinct, and complete legal entitlement exists on the part of the plaintiffs.

W. Charter of Rights – Section 15(1)

183. The plaintiffs allege that:

the arbitrary, sub-standard and inadequate support and compensation scheme(s) established by the Defendant under the New Veterans Charter violate the equality rights of the Plaintiffs and the Class protected under s. 15 of the *Canadian Charter of Rights and Freedoms* in a manner that is inconsistent with the principles of fundamental justice.

184. The defendant pleads that in order to succeed on this aspect of their claim, the plaintiffs must establish that (a) the law in question creates an adverse distinction based on an enumerated or an analogous ground and (b) the impact of the distinction perpetuates disadvantage, prejudice, or stereotype.

185. The defendant pleads that no circumstances exist in the present case which could create a scenario in which the Court might find that members of the CAF constitute a class of persons analogous to those enumerated in s. 15(1).

186. The plaintiffs also fail to plead any facts capable of supporting the proposition that their treatment is discriminatory because it perpetuates arbitrary disadvantage, prejudice, or stereotyping.

187. The defendant denies that the effect of the NVC is to impose a differential treatment on injured members and veterans compared to other Canadians who are injured on the job. Section 15(1) does not prohibit the imposition of differential treatment save where that treatment is discriminatory.

188. The defendant pleads that there must be facts alleged which demonstrate a substantive inequality which perpetuates arbitrary disadvantage. In the present case, such facts are not alleged.

X. *Charter of Rights – Section 7*

189. The plaintiffs allege:

the arbitrary, sub-standard and inadequate support and compensation scheme(s) established by the Defendant for the Plaintiffs, their families and for the Class in the New Veterans Charter violate s. 7 of the *Canadian Charter of Rights and Freedoms* in depriving the Plaintiffs and the class with [sic] the right to life, liberty and security of the person in a manner that is inconsistent with the principles of fundamental justice.

190. The defendant pleads that what the plaintiffs seek is to increase the amount of benefits they are entitled to receive; they do not seek to eliminate a deprivation. In other words, they seek to impose a positive obligation on the government that has never before been recognized under s. 7 of the *Charter*.

191. The defendant pleads that the plaintiffs have not been “deprived” of anything. Rather, the NVC confers benefits on the plaintiffs by way of services, assistance, and compensation.

192. The defendant pleads that economic interests are not protected by s. 7.

193. The defendant pleads that the plaintiffs seek to advance a pure economic interest, that is, the amount of compensation to which they are entitled if injured in service. However, there is no jurisprudence which holds that s. 7 of the *Charter* either encompasses economic rights or creates positive obligations on the state to ensure each person enjoys life, liberty and security of the person. Rather, s. 7 protects against state interference with a person’s ability to make essential life choices.

194. The defendant pleads that a scheme providing benefits cannot be said to amount to a deprivation merely because the claimant views the benefits as insufficient.

195. The plaintiffs further argue that the NVC deprives them of their right to security of the person in that it causes them serious state-imposed psychological distress resulting from its application and allege that, despite the promises made to them in the form of the Social Covenant, the government acted unilaterally to diminish the benefits they would have

otherwise received after April 1, 2006. The defendant pleads however that the “unilateral” action complained of is in fact the passage of the NVC by unanimous vote of the House of Commons.

196. There is no allegation, nor could there be, that Canada’s Parliament acted in excess of its legislative jurisdiction in passing the NVC.

197. The defendant pleads that s. 7 cannot apply in circumstances concerning the passage of *intra vires* legislation by Parliament.

Y. Charter of Rights – Section 24

198. The defendant further pleads that it is clear that it is the legislation which the plaintiffs attack and not any individual exercise of discretion by a government official. As a result, s. 24(1) of the *Charter of Rights* is not applicable.

199. The defendant pleads that an action for damages brought under s. 24(1) of the *Charter* cannot, as a general rule, be combined with an action for a declaration of invalidity based on s. 52 of the *Constitution Act, 1982*.

200. Section 24(1) damages awards will generally not be available to remedy government actions taken to give effect to laws which are valid at the time but subsequently declared to be invalid pursuant to s. 52(1). The only exception to this rule is in cases of government conduct that is clearly wrong, in bad faith, or an abuse of power.

201. The only allegations in the Claim that relate to “actions” as opposed to legislation are related to Canada failing to deviate from the provisions of the New Veterans Charter and Table of Disabilities. There are no allegations of bad faith, abuse of power, or other misconduct required to combine a remedy under s. 24(1) with an action under s. 52 of the *Constitution Act, 1982*.

Z. *Bill of Rights*

202. The plaintiffs plead that the enactment of the NVC and the discontinuation of benefits under the *Pension Act* were not done in accordance with due process. They say that the change was “unilaterally imposed during a time of war despite the Social Covenant”, notwithstanding the obligations of the Crown to members and veterans of the CAF. The defendant pleads however that no due process argument can succeed in relation to the passage of legislation by Canada’s Parliament.

203. The defendant pleads that a court cannot compel Parliament to change its legislative procedures based on the *Bill of Rights* and that due process protections cannot interfere with the right of the legislative branch to determine its own procedure.

204. What the plaintiffs complain of is the alleged lack of due process in passing legislation which altered the benefits previously provided under the predecessor legislation. The defendant pleads that there is no such due process requirement. Further, there is no possibility that entitlements under the former statutory provisions could somehow be transmuted into vested rights which might survive the passage of legislation altering those former legislative provisions.

AA. *CLPA s. 9*

205. The defendant pleads and relies upon s. 9 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (“CLPA”) which reads as follows:

9. No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.

206. The defendant pleads that the plaintiffs are all veterans of military service who were injured in the line of duty. Their military service is the genesis of their injuries, and the reason why they are entitled to compensation under the NVC. There is a nexus between the plaintiffs’

military service and their entitlement to compensation that clearly engages s. 9 of the CLPA. At the root of all of their claims in this action is the belief that the compensation received under the NVC is inadequate. In other words, they seek additional compensation for the same injuries.

207. The defendant pleads that it is beyond dispute that the compensation and benefits paid to the plaintiffs under the NVC are “in respect of” injuries suffered in the performance of their duties as members of the CAF. Further, the plaintiffs’ claims based on the *Charter*, the *Bill of Rights*, fiduciary duty, and Honour of the Crown flow directly from, and could not exist but for, the injuries suffered by the plaintiffs, for which they have received compensation. The causes of action advanced in this claim clearly arise out of the incident which entitles them to a pension; they are as a result subsumed under s. 9. The defendant pleads that the claims advanced are barred by s. 9 of the CLPA.

BB. Core Policy Decision

208. The defendant further pleads that in enacting the NVC, the Government, with the full support of all political parties, made a deliberate policy choice to move from an approach which encouraged dependence and focused upon illness to a regime which was intended to foster independence and wellness. Benefits under the NVC are not therefore intended to be the equivalent of benefits which may have been available under the prior legislation but rather are part of a broad suite of benefits and services intended to encourage a transition to independent civilian life. As a deliberate exercise of core policy, such decisions are neither justiciable nor subject to review by the courts.

209. The defendant denies that the claims as set out in the further amended notice of claim are capable of certification as a class action, and specifically denies that any reasonable cause of action is set out therein, that any common issue exists, and that a class action would be the preferable means of resolving the claims of the putative class.

210. The defendant pleads that the claims of the representative plaintiffs as presented demonstrate that any consideration of them would require a highly individual review of their unique circumstances, conditions, and entitlements, which is indeed the approach taken

under the legislation which the plaintiffs seek to attack. The defendant pleads that a class action is ill suited to such a review.

211. The defendant further pleads that the currently ongoing parliamentary review of the NVC is the preferable means of resolving the claims of the putative class.

CC. Costs

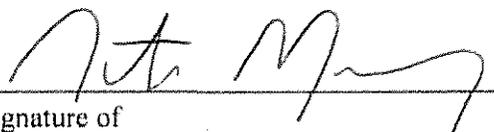
212. The defendant pleads and relies on Rule 14-1(9) of the *Supreme Court Civil Rules B.C. Reg 168/2009* with respect to costs.

Defendant's address for service: Department of Justice Canada
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Attention: Paul Vickery / Nathan Murray

Fax number address for service: 604-775-5942

E-mail address for service: Not applicable

Dated: January 31, 2014



Signature of

defendant lawyer for defendant

Jasvinder S. Basran,
Regional Director General

Fof: **Per: Paul Vickery**
Department of Justice
British Columbia Regional Office

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

THIS RESPONSE TO CIVIL CLAIM is prepared and served by Jasvinder S. Basran, Regional Director General, British Columbia Regional Office, Department of Justice (Canada), whose place of business and address for service is the Department of Justice, 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9, Telephone: 604-666-2061, Facsimile: 604-775-5942, Attention: Paul Vickery / Nathan Murray.