

Official Transcript Highlights
 Government of Canada's arguments
 22-24 July 2013

Day	Page	Citation
22 July 2013	5	1 It is the position of the Attorney General 2 of Canada that none of the claims asserted have a 3 reasonable prospect of success and the claim 4 ought to be struck.
	6 7	35 I (Mr. Henderson) would submit to this Court that this 36 application to strike is not prejudicial to the 37 prospective members of this class. Rather, it 38 can only serve to benefit them. Should the 39 entire claim be struck, it will prevent the 40 needless waste of time and money pursuing a claim 41 that was bound to fail in any event. It will 42 allow the class members to pursue their 43 grievances in a more appropriate forum. It will 44 also prevent false – THE COURT: What do you say is a more appropriate 46 forum?
	7	1 MR. HENDERSON: A more appropriate forum -- 2 THE COURT: Yes. 3 MR. HENDERSON: -- would be perhaps lobbying members 4 of Parliament who have the power and ability to 5 alter legislation.
	20	29 Aside from the Charter claims that 30 Mr. Vickery will address later, no provisions of 31 the constitution have been identified. So I 32 would submit to this Court that the honour of the 33 Crown as an underlying principle of a 34 constitution cannot be used to invalidate otherwise validly enacted legislation.
	21	27 Now, assuming that honour of the Crown could 28 apply in the present context, which is denied by 29 the Attorney General of Canada, it would still be 30 plain and obvious that the claim had no prospect 31 of success. Directly importing the aboriginal 32 application of honour of the Crown to fiduciary 33 duty would still require the plaintiffs to 34 identify a specific interest, which they have not 35 done.
	29	THE COURT: Well, doesn't that right there recognize 37 the possibility of fiduciary obligation in other

		<p>38 contexts, in other circumstances, a statute that 39 creates -- 40 MR. HENDERSON: It certainly does. If there is a 41 statute that creates an interest. 42 THE COURT: Right. 43 MR. HENDERSON: But, as it states, the statute has to 44 create complete legal entitlement, and even in 45 that case the Court that might give rise to a fiduciary duty.</p>
	33	<p>So it is submitted that it is plain and 18 obvious that Canada does not bow to the proposed 19 class of fiduciary duty.</p>
	34	<p>4 It is submitted that separate and apart from the 5 lack of material facts to support the alleged 6 causes of action of the claim, this action is 7 statute barred by virtue of section 9 of the 8 Crown Liability and Proceedings Act. 9 It is plain and obvious that the claim at 10 issue is in respect of the same injury, damage or 11 loss that a pension or a compensation has been 12 paid or is payable. Each of the named 13 representative plaintiffs has claimed and 14 received a pension and other compensation from 15 the Department of Veterans Affairs under the New 16 Veterans Charter.</p>
	42	<p>12 In my submission (Mr. Vickery), it immediately becomes apparent 13 that we are dealing with equality rights, and 14 it's in the nature of an equality right that the 15 claim that is being asserted has to be reviewed 16 by comparison to rights generally available to 17 members of the Canadian society. It cannot stand 18 alone in the abstract but, rather, is a question 19 of whether substantive equality, free of 20 discrimination, is preserved.</p>
	46	<p>3 MR. VICKERY: That's right, and I'll come to that by 4 saying that what the legislation in fact does is 5 provide a benefit scheme, and, as I take you 6 through the jurisprudence, I'll be submitting to 7 you that it's quite clear that a statute which 8 provides benefits neither imposes burdens or 9 obligations, nor withholds or limits access to 10 something that's otherwise generally available.</p>
	46	<p>34 THE COURT: All right. But that's a different issue. 35 MR. VICKERY: It is, but that's the basis of any</p>

	<p>36 limitation, not this Act. And in my submission 37 that's a very important distinction to maintain. 38 This is an Act that provides benefits. 39 There is no positive obligation, and I'll come to 40 that in my section 7 argument, but there is no 41 positive obligation on the government to provide 42 benefits. When Parliament determines that it 43 will undertake a benefit scheme, it's free to 44 choose the range of benefits and the 45 circumstances in which the benefits will be put 46 forward.</p>
47	<p>1 ...But in 2 general I (Mr. Vickery) say the proposition is government has 3 no positive obligation to provide benefits.</p>
47	<p>30 ...There must be a 31 distinction drawn by the statute between the 32 affected group and other members of society, and 33 the distinction must be based on a personal 34 characteristic and it must have the effect of 35 either imposing a burden that isn't imposed on 36 others or limiting access to a benefit that is 37 generally available to others. And unless it 38 meets those baseline criteria,</p>
55	<p>THE COURT: Just back to what you said earlier, these 11 veterans had the benefit of the compensation 12 regime under the Pension Act. 13 MR. VICKERY: Right. 14 THE COURT: That was taken away from them they say. 15 MR. VICKERY: Yes. 16 THE COURT: It was changed. 17 MR. VICKERY: It was changed by Parliament. 18 THE COURT: And they say that what they're now 19 receiving is less than what Parliament gave them 20 before. 21 MR. VICKERY: Yes.</p>
57	<p>7 THE COURT: Is a better way of doing it the same thing 8 as we want to save money? 9 MR. VICKERY: There is absolutely no question that 10 government is entitled to trim allocations if 11 they feel there is a need to save money, as you 12 say. I'm not suggesting for a moment that that 13 was what was in place here because I don't 14 believe it was. 15 THE COURT: Well, we have no evidence as to</p>

		<p>16 [indiscernible]. 17 MR. VICKERY: There's no evidence as to that, but, 18 yes, if Parliament were to say we're going to 19 reduce all benefits across the board to everyone 20 by 5 per cent, they're free to do that because 21 that is their mandate as our government. And if 22 there is a complaint about it, the courts have, 23 on a number of occasions, said the remedy is not 24 in the court, the remedy is at the polls. So 25 they're free to toss the government out and to 26 bring a new government who will amend the 27 offending legislation.</p>
	65	<p>16 And as I've said (Mr. Vickery), the case at bar involved a 17 claim that welfare benefits provided under the 18 applicable social assistance legislation were 19 inadequate to meet basic needs. The Court said 20 that does not involve a deprivation. The Court said 21 reasoning, in our submission, is that a scheme 22 that provides benefits where otherwise there is 23 no obligation on government to do anything cannot 24 be said to deprive a claimant of something by 25 virtue of not giving them as much as they would 26 like to receive.</p>
	70	<p>1 to the regime that provides benefits to disabled 2 veterans. We had that level of support, if you 3 will, it appears from my friend's pleading, in 4 Parliament to effect this change. And given the 5 concept of Parliamentary autonomy, it should not, 6 in our submission, be open to the Court to second 7 guess Parliament in that decision to offer 8 benefits under a new and different regime from 9 the prior Pension Act</p>
	74	<p>29 Now, we have already submitted to you, of course, 30 that section 7 does not place a positive 31 obligation on the state.</p>
23 July 2013	8	<p>9 In our submission (Attorney General), it's plain and obvious 10 based on the reasons in Authorson that there is no 11 reasonable prospect of the claim under the Bill of 12 Rights succeeding.</p>