

EQUITAS

justice - fairness – equity

Newsletter

March 2014

Equitas has posted the Government's January 2014 legal documents on-line. The main issue is that the Government of Canada states there is no "social covenant" or "social contract" between members of the CAF and the Government and the people of Canada which has the attributes of creating a "fiduciary duty" on the Government's part. In addition, the Government has pleaded that the evolution of the law as it relates to the Honour of the Crown remains confined to the Aboriginal context.

With respect to the key constitutional positions raised in the lawsuit, they are summarized in a Miller Thomson Briefing Memorandum found at www.equitasociety.ca under the legal action section.

Equitas remains committed to assisting with this claim and again thanks all of its supporters. It was known at the outset that this case would not resolve quickly, but Equitas remains committed to its mission of securing fair compensation for all disabled veterans. Please continue checking our website for updates as the process continues.

The following is from Miller Thomson:

Miller Thomson commenced an action in the Supreme Court of British Columbia in October 2012 on behalf of all veterans who have made claims under the New Veterans Charter ("NVC"). This action has been brought as a class action under the British Columbia *Class Proceedings Act* with a global focus, rather than pursuing individual soldiers' claims against the NVC. By bringing this lawsuit on behalf of all veterans who have made claims under the NVC, the intention is to show that the NVC is inherently unfair, not in accordance with the duties of honour and loyalty that the Crown owes to its soldiers, and contrary to the *Canadian Charter of Rights and Freedoms*.

Federal Government preliminary motion to have the case struck out

At the outset of the litigation, and before filing a Response to Civil Claim, the federal government brought a preliminary motion to dismiss the action. This motion was argued before the assigned Case

Management Judge, Mr. Justice Weatherill, on July 22 through 24, 2013.

On September 6, 2013, Mr. Justice Weatherill issued his reasons for judgment, in which he dismissed the federal government's motion to strike the claim and permitted the actions to proceed, with some minor amendments to the Notice of Civil Claim.

The Plaintiffs filed a further amended Notice of Civil Claim as directed by the Court, and proceeded with the action.

Appeal of the rejection of the preliminary motion to have the case struck

On October 2, 2013 the Government of Canada filed a Notice of Appeal to the British Columbia Court of Appeal seeking to overturn the decision of Mr. Justice Weatherill and have the action struck out.

Both the federal government (as Appellant) and the Plaintiff veterans (as Respondents) have filed factums (written memoranda of argument) with the Court of Appeal. Depending on the availability of the court, the appeal may be heard as early as June, 2014.

Continuation of the action

Pleadings

Although the motion to dismiss the action is being appealed, the Plaintiffs brought a motion before the Case Management Judge that other aspects of the action continue while the appeal proceeds.

The Plaintiffs brought a Case Management application before Mr. Justice Weatherill on November 12, 2013, which resulted in an order that directed the federal government to file and serve its Response to Civil Claim on or before January 31, 2014. The federal government complied with this deadline.

Position on Key Issues

The federal government has now filed a written factum with the Court of Appeal on the appeal from the decision rejecting the motion to dismiss the claim, and a Response to Civil Claim outlining the government's defence to the claim. There is a legal distinction between the positions the government may take in each of these documents. On a motion to strike, a claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. In the Response to Civil Claim, the Defendant may take issue with the facts pleaded, and assert that they are not true.