

NOV 28 2012

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

AMENDED NOTICE OF CIVIL CLAIM

(Amended by the Plaintiffs pursuant to Rule 6-1 (1)(a) of the Supreme Court Civil Rules on the 28th day of November, 2012)

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) send a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must:

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A response to civil claim must be filed and served on the Plaintiff(s):

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Notice of Civil Claim was served on you;
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Notice of Civil Claim was served on you; or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

PART 1: STATEMENT OF FACTS

A. The Parties

- 1. The Plaintiffs are all members, or former members, of the Canadian Forces who have incurred injuries during their service.
- 2. The Plaintiffs Daniel Christopher Scott and Gavin Michael David Flett are resident in British Columbia and commence this proceeding as representative plaintiffs on behalf of the members of a proposed class of two or more similarly situated residents of British Columbia and elsewhere in Canada who have claims that raise common issues to be further defined in the Plaintiffs' application for class certification and the Plaintiffs plead and rely upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- 3. The Plaintiffs who are not resident in British Columbia have declared their intention to opt in to the class proceeding as a member of the class and, if applicable, subclass certified by this Court.
- 4. The Defendant, the Attorney General of Canada, is named pursuant to section 23(1) of the *Crown Liability and Proceedings Act* R.S.C. 1985, c. C-50.

B. The Class and Subclasses

- 5. The general class consists of Canadian Forces members and veterans who have claims for services, assistance and compensation under the provisions of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2011, c. 12 [the New Veterans Charter], (the "Class").
- 6. As specified in this Claim, designated Plaintiffs bring this action as representative plaintiffs on behalf of subclasses of two or more similarly situated members who have claims that raise common issues not shared by all the Class members, namely:
 - (a) The Plaintiffs Daniel Christopher Scott and Gavin Michael David Flett, in addition to being the general Class representatives, are representatives for a subclass of Canadian Forces members and veterans who have claims arising from non-combat injuries incurred while on Reserve Service;

- (b) The Plaintiff Daniel Christopher Scott in addition to being one of the general Class representatives is the representative for a subclass of Canadian Forces members and veterans who have claims arising from in service injuries as a result of a tort committed by a servant of the Crown in Right of Canada for which there is vicarious liability on the Crown in Right of Canada;
 - (c) The Plaintiff Mark Douglas Campbell and Aaron Michael Bedard are the representatives for a subclass of Canadian Forces members and veterans of the regular force who have claims arising from combat injuries incurred on a military operation;
 - (d) The Plaintiffs Mark Douglas Campbell and Kevin Albert Matthew Berry are the representatives for a subclass of Canadian Forces members and veterans who have claims under both the *Pension Act* and the New Veterans Charter;
 - (e) The Plaintiffs Mark Douglas Campbell and Aaron Michael Bedard are the representatives for a subclass of severely disabled Canadian Forces members and veterans who require care for the rest of their lives; and
 - (f) The Plaintiffs Bradley Darren Quast and Mark Douglas Campbell are representatives for a subclass of Class members not resident in British Columbia.
7. The number of Class members is, as yet, undetermined, however, the proposed Class is so large that joinder of all members of the Class as Plaintiffs would be impractical.
 8. There are questions of law and fact common to the Class. The claims of the Plaintiffs are typical of the claims of the Class and the Plaintiffs herein will adequately represent and protect the interests of the Class.
 9. Separate actions by individual members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class, which could establish incomplete standards of conduct for the Defendant.
 10. Questions of law and fact common to the members of the Class with respect to the relief claimed predominate over questions affecting individual members. A class action is superior to the other available methods for a fair and efficient adjudication of this matter.
 11. The Plaintiffs, who are members of the Class or subclass, have sustained financial loss as a result of the unlawful conduct of the Defendant as alleged in the Notice of Claim and have no conflict with other members of the Class or subclass.
 12. In the absence of a class action, the Defendant will retain the benefits of its wrongful conduct because Class members are unlikely to bring, and have not brought, separate individual lawsuits due to the size of individual Class members' claims and their limited resources as compared with the cost of litigation and the resources of the Defendant.

C. Daniel Christopher Scott

13. The Plaintiff, Daniel Christopher Scott is a 26 year old reservist with the rank of Bombardier who serves with the 15th Field Artillery Regiment based in Vancouver, British Columbia and who resides in Surrey in the Province of British Columbia. Mr. Scott joined the 15th Field Artillery Regiment in 2003 when he was 17 years old.
14. Mr. Scott served two tours of duty in Afghanistan on Class C Reserve Force contract agreements.
15. Prior to his tours in Afghanistan, Mr. Scott was a college student at Kwantlen Polytechnic University in Surrey, British Columbia. Mr. Scott intended on furthering his education with a post graduation career objective to either join a police department or to become involved in an outdoor guiding business, eventually working towards a business interest in a guiding company. Mr. Scott had undergone training and attended career familiarization sessions with the police.
16. Prior to his tours of duty, Mr. Scott was in excellent physical and mental health and was an avid hiker, skier, rock and ice climber.
17. On or about February 10, 2010, while serving his second tour of duty in Afghanistan, Mr. Scott was required to attend a training session at the Kankala Range, Daman District, Kandahar Afghanistan, Operation Athena.
18. Mr. Scott's platoon was required to attend this training session following fellow Canadian soldiers falling victim to an Improvised Explosive Device ("IED") strike on December 30, 2009, which killed four Canadian soldiers, as well as a Canadian journalist Michelle Lang, and left five other Canadian soldiers seriously wounded, discussed below.
19. During the training session on February 10, 2010, C19 Defensive Command Detonated Weapons (claymore mines) were discharged as part of the training.
20. As a result of negligence of the Canadian Forces personnel conducting the training, the training range had been set-up and was being operated improperly, with the result that a C19 mine exploded at close range when the platoon members were not under cover or withdrawn from the danger area.
21. Immediately after the C19 mine exploded, Mr. Scott began to move to a position of cover behind an armoured vehicle and while doing so stopped to warn another member of his platoon to take cover.
22. At that moment a second C19 mine exploded and metal balls from the mine travelled in the wrong direction towards the attending soldiers rather than the correct direction away from the soldiers. As a result of the negligently detonated C19 mine, both Mr. Scott and the other member he was attempting to assist were critically injured. Three other soldiers were less seriously injured.

23. As a result of the incident, Canadian Forces court-martial charges have been preferred against two officers in command of the exercise and the warrant officer who detonated the mine.
24. Mr. Scott was hit with numerous of the mine's metal balls, one of which went through his body armour and through his chest. Mr. Scott's left rib was fractured, his left lung was collapsed, and his kidney, spleen and pancreas were damaged.
25. Mr. Scott and the other member, who was also critically injured, were the first soldiers to be airlifted by helicopter from the training range to Kandahar for emergency medical treatment. Mr. Scott was conscious for the flight, during which he held his friend's hand. Mr. Scott made it alive to Kandahar; his friend did not.
26. At the Kandahar Air Field, Role 3 Hospital, Mr. Scott underwent emergency surgery. An 11 inch incision was made in Mr. Scott's stomach and the surgeons removed his left kidney, his spleen and the tail of his pancreas. Mr. Scott lost 1.5 litres of blood and his life was in danger for blood loss.
27. Mr. Scott was listed by the medical authorities as "very seriously injured", which is the final category of trauma before death. Mr. Scott had tubes into his chest to deal with his lung injury and tubes into his stomach to deal with toxic fluids leaking from the remaining portion of his pancreas.
28. Mr. Scott was transported by air with an American Critical Transport Team to the Bagram Air Base in Afghanistan. Mr. Scott was then transported by air to the Landstuhl Regional Medical Center in Ramstein, Germany.
29. In Germany, Mr. Scott underwent additional operations and his abdomen was eventually closed up.
30. On or about February 20, 2010, Mr. Scott was flown to Vancouver by a Royal Canadian Air Force aircraft with a full medical team. Upon arrival in Vancouver, Mr. Scott was admitted in the burns and plastics unit at Vancouver General Hospital ("VGH"). At VGH, the metal ball that had entered Mr. Scott was removed.
31. On or about February 26, 2010, two weeks after the injury, Mr. Scott began to experience pancreatic burn as a result of enzymes that were leaking into his abdomen, a potentially serious condition. Mr. Scott underwent an oral scope to implant a shunt to assist with drainage, however the doctors were unable to complete the surgery at that time.
32. On or about March 1, 2010, the surgery to implant the shunt proceeded.
33. The following day, on or about March 2, 2010, VGH discharged Mr. Scott into the care of his parents. Mr. Scott still had drainage tubes in his abdomen and continued to experience a lot of pain and as a result, on or about March 4, 2010, Mr. Scott was re-admitted at VGH. Tests determined that he had an abdominal staph infection caused by staphylococcus aureus bacteria, requiring another lengthy hospital stay.

34. In or around April 2010, Mr. Scott was given 6 weeks sick leave and then was required to start a return to work program. His request for stress leave was denied.
35. Following the February 12, 2010 IED blast a Canadian Forces Board of Inquiry was convened and reported to the Federal Government on the incident. Three Canadian Forces members have been charged with unlawfully causing harm and negligent performance of their military duty in regard to Mr. Scott's injuries. Two of the accused have been charged with manslaughter in the death of Mr. Scott's comrade in arms.
36. In or around May 2010, Mr. Scott made a claim to Veterans Affairs Canada ("VAC") for the injuries he sustained during the February 12, 2010 IED blast, including but not limited to:
 - (a) loss of spleen (surgically removed);
 - (b) left pneumothorax;
 - (c) fractured left 12th rib;
 - (d) gastric ulcer;
 - (e) damaged pancreas (portion removed);
 - (f) loss of left kidney (surgically removed); and
 - (g) reduced quality of life, including stress and pain and suffering.
37. On or about July 5, 2010, Mr. Scott received a letter from VAC assessing his disability at 15% and awarding him a \$41,411.96 lump sum payment in lieu of a disability pension for his injuries.
38. VAC awarded this amount based on the following breakdown:
 - (a) laceration of the left kidney- 15% comprised of:
 - (i) a medical impairment rating of 12;
 - (ii) and a quality of life rating of 3;
 - (b) laceration of the spleen - 0%;
 - (c) left pneumothorax - 0%;
 - (d) fractured left 12th rib - 0%;
 - (e) gastric ulcer - 0%; and
 - (f) laceration of the pancreas – unassessed.

39. The assessment letter stated that because the laceration to the pancreas was not yet stable, VAC was unable to assess the extent of Mr. Scott's disability at that time. Therefore, this settlement may be readjusted if, for example, his damaged pancreas leads to diabetes. Otherwise this is a full and final payment.
40. The amounts awarded to Mr. Scott are an inadequate reflection of his pain and suffering, and in addition or in the alternative, these amounts do not adequately take into account the loss of earning capacity Mr. Scott has sustained and will sustain, nor do they account for any of the other typical heads of damages that he would have been awarded by a Court in a civil claim.
41. As a result of his injuries, Mr. Scott has been left with permanent medical issues and he continues to endure pain and suffering and a loss of enjoyment of life. He will continue to require care in the future.
42. Upon return to Canada, Mr. Scott was employed at his Canadian Forces home unit as part of a return to work program until he recovered from his injuries. Once he recovered he was released from Class C service back to Class A reservist status, as a result of which his pay has been cut to one half day a week.
43. The Canadian Forces have failed to accommodate Mr. Scott with alternative employment. Mr. Scott's ability to find alternative suitable employment on his own has been negatively affected by his disabilities, especially in his originally planned career opportunities. As a result of his injuries he is less capable of earning an income and will continue to suffer income loss in the future.

D. Gavin Michael David Flett

44. Gavin Michael David Flett is a 37 year old reservist in the Canadian Forces. He holds the rank of Master Corporal in the 39th Brigade Group. Mr. Flett joined the Canadian Forces in 1995.
45. In and around 2008, Mr. Flett served a tour of duty in Afghanistan on a Class C contract. He wears the General Campaign Star in recognition of his combat role in Afghanistan.
46. Prior to his 2008 tour in Afghanistan, Mr. Flett had aspirations to remain in the military full time or to pursue a career in the correctional service, the police service, the sheriff's department or in the fire department. In his spare time he enjoyed running, climbing, hiking, and other recreational sports.
47. Prior to his deployment, Mr. Flett was in peak physical condition. He was able to complete the Army Fitness Training program with little difficulty and had completed half the JTF-2 preliminary fitness training manual.
48. On or about August 24, 2008, while serving a tour of duty in Afghanistan, Mr. Flett was required to fortify an Afghan National Army combat outpost in Ashakay. He was required to clear out fields of fire, which involved cutting down trees and bush.

49. While engaged in cutting down the trees, one tree fell in the opposite direction than was intended and landed on Mr. Flett.
50. The main trunk of the tree missed Mr. Flett, but some of its branches landed on him as he attempted to crawl to safety.
51. As a result of the tree falling on him, Mr. Flett sustained injuries in the form of a broken left femur and smashed right talus (ankle). His right talus bone was fractured into several pieces; too many to count on the X-rays.
52. Mr. Flett was airlifted out of Ashakay as a priority Alpha (life threatening injuries) and sent to Kandahar Airfield.
53. Mr. Flett's femur was operated on immediately in Kandahar. The fracture was repaired by an external fixator, secured to his left femur through four incisions made into his left thigh. His talus was put into a cast to be operated on at a later date.
54. Mr. Flett's femur was again operated on in Germany by removing the external fixator and drilling out bone marrow to insert a rod the entire length of his femur. The rod is secured by two bolts, one in the top near Mr. Flett's hip and one in the bottom, near his knee.
55. The injury to the muscle tissue in Mr. Flett's left leg has left it weak. The areas where the bone broke and the bolts are affixed to the bone cause him pain when lightly stressed.
56. Following his operation in Germany, Mr. Flett was sent to VGH in Canada for surgery on his talus.
57. The operation repaired Mr. Flett's talus using approximately 10-12 pins. It left him in a wheelchair for six weeks, crutches for another eight weeks, and a cane for several months afterward.
58. Mr. Flett underwent physical therapy for approximately 8 months until reaching a plateau where no further progress was made.
59. In or around April 2009, Mr. Flett made a claim to VAC for the injuries he sustained on August 2008, including his:
 - (a) left femur fracture; and
 - (b) right talus fracture.
60. On or about July 9, 2009, Mr. Flett received a letter from VAC assessing his disability at 5% and awarding him a \$13,368.25 lump sum payment in lieu of a disability pension for his injuries.
61. VAC awarded this amount based on the following breakdown:
 - (a) right talus fracture- 5% comprised of:
 - (i) a medical impairment rating of 4;

- (ii) and a quality of life rating of 1; and
 - (b) left femur fracture (Operated) - 0%.
- 62. The assessment letter stated that although he was not eligible to receive an award for his left femur fracture, he was entitled to receive medical treatment for the condition.
- 63. On or about July 20, 2009, Mr. Flett sought a review of the above assessment.
- 64. In addition, in April of 2009, Mr. Flett made a claim for Post Traumatic Stress Disorder ("PTSD") he suffered as a result of his service. On or about November 19, 2009, Mr. Flett received correspondence from VAC explaining that they were in the process of gathering information to finalize his assessment but in the mean time awarding him an initial 10% disability assessment and a lump sum payment of \$26,736.49. As with other veterans with similar claims, VAC stated that because Mr. Flett's PTSD was not yet stable, they could not assess the total extent of his disability at that time. Mr. Flett was informed that his VAC district office would contact him in five months to arrange a medical exam or to obtain further information from his doctor or health care professional.
- 65. On November 17, 2010, Mr. Flett received \$82,823.91 as his second and final lump sum settlement from VAC for his PTSD. Mr. Flett has been reassessed at 39% disability, comprised of:
 - (a) a medical impairment rating of 35; and
 - (b) a quality of life rating of 4,effective November 2, 2010.
- 66. The hearing of Mr. Flett's appeal regarding his 5% disability rating for his right talus fracture was held on November 1, 2011. The decision, dated November 21, 2011, awarded Mr. Flett a 6% disability effective November 1, 2011; a 1% increase.
- 67. Despite the evidence led by Mr. Flett of his extremely limited mobility to the extent that he is only able to walk one or two blocks, has difficulty with stairs and has a painful ankle that is frequently swollen, the Review and Appeal Board (the "Board") concluded that the evidence showed that he has "essentially normal range of motion, but with pain now present on a daily basis and/or with movement". This attracted a Medical Impairment rating of 4% under Table 17.12. However, in light of Mr. Flett's evidence that he has difficulties with household and domestic activities, is unable to work in his normal occupation, and is no longer able to participate in social activities with his friends, the Board determined that he "suffered moderate limitations, reduction and interference with his usual and accustomed activities of independent living, recreational and community activities, and/or personal relationships", and therefore his quality of life rating was increased from 1% to 2%, for a total disability rating of 6%.
- 68. The amounts awarded to Mr. Flett are an inadequate reflection of his pain and suffering, and in addition or in the alternative, these amounts inadequately take account for the loss of earning capacity Mr. Flett has sustained and will sustain, nor do they account for any

of the other typical heads of damages that he would have been awarded by a Court in any civil claim.

69. No other financial benefits were awarded to Mr. Flett, who can no longer work in the fields that he had planned for. VAC has agreed to provide mobility support to the extent deemed necessary, if and when such support is required.
70. Mr. Flett currently has limited use of his right ankle and suffers from residual swelling and pain originating from the holes drilled into the bone from the external fixator. This often causes him to take painkillers.
71. Mr. Flett walks with a limp which is amplified following any activity such as light exercise, moderate walking, light housework, or yard work.
72. Mr. Flett can no longer walk long distances, run, jump, climb, hike, or play any sport that is high impact or involves any kind of lateral motion.
73. Mr. Flett's standing with the Canadian Forces was pending a review of his limitations and universality of service. On or about September 19, 2011, Mr. Flett's full time (Class B) position with the Canadian Forces was terminated.
74. Prior to, and in anticipation of, the termination of Mr. Flett's Class B position, the Canadian Forces Housing Agency ("CFHA") served Mr. Flett with an eviction notice, terminating his residency at a Residential Housing Unit at Jericho Garrison.
75. Mr. Flett challenged the eviction and was permitted to stay in the residence until CFHA's decision could be revisited. However, during that time Mr. Flett and his wife broke off their marriage. Mr. Flett felt that he would no longer be able to fight the eviction as a change in household size could affect his entitlement to a Residential Housing Unit. He dropped his appeal of the eviction.
76. Mr. Flett moved out of his residence on or about July 1, 2012.
77. Mr. Flett's ability to pursue a career in correctional, police, sheriff, or fire services has been negatively affected by his disabilities. As a result, Mr. Flett is currently putting himself through university without any assistance from VAC.
78. Mr. Flett will have 50% of his tuition fees reimbursed by the Canadian Forces' Individual Learning Plan program, subject to \$2000 annual and \$8000 lifetime limitations. The cost of textbooks is 100% reimbursable through the same program. Mr. Flett is required to pay the costs up front and is not reimbursed until the end of each study period. Consequently, he has amassed \$10,000 in credit card debt.
79. In addition, Mr. Flett's efforts to finance his education have been hampered by the lump sum received from VAC. Mr. Flett's application for disability status with StudentAid BC was declined. He was not eligible for StudentAid BC disability status because the amount of his personal savings did not evidence financial need. Mr. Flett's savings largely consisted of the lump sum he received as compensation for his injuries.

E. Mark Douglas Campbell

80. Mark Douglas Campbell is a 47 year old Regular Force infantry soldier with 32 years of service in the Canadian Forces, the last 25 of which have been full-time. He is a Major in the Princess Patricia's Canadian Light Infantry, currently posted to the Joint Personnel Support Unit Edmonton and awaiting medical release due to disabilities attributable to his military service. Mr. Campbell served two tours of duty in Afghanistan. He wears the Canadian Forces Decoration with one clasp to indicate over 22 years of good service.
81. During his service, Mr. Campbell was awarded decorations for service in peacekeeping missions, including:
 - (a) the UN Forces in Cyprus 1990;
 - (b) the NATO Stabilization Force Bosnia, 1997; and
 - (c) the Canadian Forces Peacekeeping Services Medal.
82. In addition, as a result of his 2002 Afghanistan tour he received the Southwest Asia Service Medal, the U.S. Army Bronze Star and the Commander-in-Chief Unit Commendation awarded to the Third Battalion of the Princess Patricia's Canadian Light Infantry.
83. Finally, as a result of injuries sustained in his 2008 tour, he received the Sacrifice Medal. He was subsequently awarded the Queen's Diamond Jubilee Medal in recognition of his veterans advocacy efforts.
84. Prior to his final tour, Mr. Campbell was in excellent physical condition for his age and occupation, having sought prior medical treatment only for the sports-type injuries and cumulative wear and tear typically associated with his profession. He enjoyed an active lifestyle featuring a broad range of outdoor activities, including daily fitness training, running, family hiking and biking, and hunting. He was married in 1989 and has two teenaged children. Mr. Campbell was an active family man.
85. During his second tour in 2008, Mr. Campbell was deployed as the Senior Mentor to an Afghan National Army battalion in order to provide training during combat operations.
86. On or about June 2, 2008, Mr. Campbell was targeted by an IED as the Taliban's open-fire signal for a three-sided ambush.
87. The explosion blew off both of Mr. Campbell's legs above the knee and caused extensive injury. He lost a testicle and received numerous lacerations to his remaining genitalia. He also suffered abdominal scarring and a ruptured right ear drum.
88. After the explosion, an intense gun battle broke out. Mr. Campbell was evacuated by stretcher – under fire, over extremely rugged terrain – for approximately 90 minutes. This was followed by a 25 minute helicopter flight to the Field Surgical Hospital at the Kandahar Airfield. He was conscious, lucid, and received no pain medication during the evacuation due to his dangerously low blood pressure.

89. Mr. Campbell was rushed into emergency surgery on arrival at the Kandahar Airfield. He was in critical condition and had to be resuscitated on the operating table. Following surgery, Mr. Campbell was placed in an induced coma for intubation required because of blast-damage to his lungs.
90. Once his condition had stabilized several days later, Mr. Campbell was transferred to the Landstuhl Regional Medical Centre in Germany. He spent approximately one week in the Intensive Care Unit and one week in a Recovery Ward while his lungs regenerated sufficient oxygen capacity for a medical evacuation flight to Canada.
91. Mr. Campbell was subsequently flown to the University of Alberta Hospital, where he stayed for approximately two months while undergoing surgeries.
92. Two weeks after his final surgery, Mr. Campbell was transferred to the Glenrose Rehabilitation Hospital in Edmonton for physical rehabilitation.
93. He was discharged from the hospital on September 30, 2008, but continues to undergo several out-patient treatments a week for treatment of injuries sustained as a result of the blast. Mr. Campbell's medical needs are ongoing.
94. Mr. Campbell is now confined to a wheelchair.
95. Mr. Campbell required revision surgery to his remaining genitalia to correct complications arising from his injuries.
96. Mr. Campbell's ruptured ear drum caused a significant deterioration of hearing in his right ear. The ear subsequently leaked cranial fluid.
97. Mr. Campbell required significant skin grafts to thighs, which now require special care and protection.
98. Mr. Campbell also suffers from chronic overheating because of his decreased body surface area.
99. Mr. Campbell continues to suffer significant pain as a result of the traumatic amputation of his legs. He experiences chronic mechanical and neuropathic pain (phantom limb) – even when he takes pain medication. Without medication, the pain is intolerable.
100. Both of his legs have developed extremely painful and pressure-sensitive bundles of severed nerves (known as neuromas) that follow traumatic injury. The sensitivity of those areas combined with excess tissue that folds and pinches significantly limits Mr. Campbell's use of his residual stumps for normal daily activities.
101. To manage his pain, Mr. Campbell must take high dosages of painkillers and nerve-blockers, including Methadone, Lyrica, and Cymbalta. He has developed a dependence on these medications and must carefully administer dosages three times a day. The potential harm to Mr. Campbell's internal organs caused by high dosages of these drugs is also of significant concern.

102. In addition to the primary injuries sustained in the IED explosion, Mr. Campbell has struggled to cope with the side effects and follow-on conditions arising from his medical procedures and medications, including but not limited to:
 - (a) cataracts in his eyes caused by the steroids used between surgeries to reduce swelling, which were subsequently removed but created a need for corrective eyewear;
 - (b) excess tissue growth attributable to medications on his chest and both legs, which was surgically removed but may require further surgical removal;
 - (c) bladder control and urinary tract problems arising from prolonged catheter use; and
 - (d) chronic constipation from Methadone use that must be managed with prescription drugs.
103. A brain map has confirmed that Mr. Campbell sustained an indeterminate degree of brain injury. Mr. Campbell is unfortunately fully cognizant of the fact that he has a diminished mental capacity for routine tasks such as vocabulary recall and mental mathematics. He has presented numerous symptoms of a Traumatic Brain Injury (“TBI”), including but not limited to short-term memory loss, difficulty with routine problem analysis, difficulty focusing on one task, and reduced concentration.
104. Mr. Campbell experienced severe mental health injuries initially stemming from his physical injuries, but more recently and predominantly due to his perceived betrayal and abandonment by the Canadian Forces, VAC and the Federal Government.
105. Mr. Campbell was formally diagnosed with Major Depressive Disorder and PTSD on August 15, 2012, although his Canadian Forces medical file details much earlier indications of mental health struggles documented by mental health caregivers at the Edmonton Garrison Clinic.
106. To help him to cope with his psychological injuries, Mr. Campbell was prescribed and began taking high dosages of the anti-depressant Cymbalta in 2008, and commenced using the complimentary anti-depressant Wellbutrin in August 2012.
107. Mr. Campbell sees a civilian psychologist and a Canadian Forces-contracted civilian therapist on a weekly basis, with access to a Canadian Forces Psychiatrist as required for matters related primarily to anti-depression medications.
108. Mr. Campbell has trouble sleeping as a result of his physical and mental injuries. Mr. Campbell’s wife indicates that he frequently shouts and lashes out while sleeping. On occasion, Mr. Campbell lashes out in his sleep and accidentally strikes his wife.
109. Mr. Campbell has also experienced problems with alcohol as a result of his injuries.

110. Prior to his first tour in Afghanistan in 2002, Mr. Campbell drank alcohol only in social settings. Following his return to Canada, Mr. Campbell's drinking increased but tapered off to abstinence during the latter stages of his 2007 pre-deployment training.
111. Following the injuries sustained on his 2008 tour, Mr. Campbell began to drink heavily as a method of coping and self-medication. His medications were not yet stabilized and alcohol was the only relief from phantom limb pain that would allow him sleep.
112. In mid-2010, Mr. Campbell was drinking alcohol nearly constantly. Blood-work and an ultrasound revealed marked fatty tissue infiltration of Mr. Campbell's liver, indicating the onset of liver disease.
113. Mr. Campbell sought professional assistance for his alcohol addiction in late 2010 and attended 10 weeks of residential treatment in early 2011. He is in active recovery from his alcohol dependence and continues to monitor his liver damage.
114. Mr. Campbell's injuries have had a devastating effect on his family.
115. In addition, the loss of a testicle, low testosterone, genital scarring, and a negative body image have caused Mr. Campbell to completely lose his libido. Mr. Campbell has lost the close marital intimacy he previously shared with his wife of 23 years.
116. Mr. Campbell continues to receive treatment for the physical and psychological injuries sustained in the IED attack. His most recent surgery was completed in October 2012 and he will require further surgeries.
117. In and around June 2008, Mr. Campbell made a claim to VAC for the loss of both of his legs.
118. On or about July 22, 2008, Mr. Campbell received letters from VAC assessing his disability at 104% and awarding him a lump sum payment of \$260,843.84 for the injuries to his legs. VAC awarded this amount based on the following breakdown:
 - (a) loss of the right leg (through knee) – 52%; and
 - (b) loss of the left leg (through knee) - 52%.
119. This initial disability assessment was based on incorrect information that Mr. Campbell's amputations occurred through the knee, rather than above the knee. On or about August 19, 2008, VAC corrected this error and increased the disability assessment for each leg to 76%, resulting in a total disability rating of 152%. However, this increase did not affect the award made to Mr. Campbell because it already exceeded the \$250,000 maximum for compensation of pain and suffering.
120. Mr. Campbell currently has no established VAC Entitlements for the other major injuries and sequela sustained as a result of the June 2008 explosion. Mr. Campbell is in the process of filing a claim with VAC for these injuries. It is necessary to establish these entitlements so that he can receive Canadian Forces support for ongoing medical care of these injuries without substantiation or delay. However, the financial claims made for

these injuries will be meaningless as Mr. Campbell has already maxed out the compensation available for pain and suffering.

121. As he is still a serving member of the Canadian Forces, Mr. Campbell continues to receive his regular monthly pre-tax salary of \$9,220.00. Since his 2008 injury, Mr. Campbell has received \$100 a month from the Veterans Independence Program to assist in paying for cleaning and home maintenance. Since 2010, he has also received approximately \$150-\$170 monthly as a VAC Clothing Allowance.
122. Mr. Campbell will be medically released from the Canadian Forces once all of his outstanding administrative issues are resolved. He is awaiting completion of renovations of a fire-escape ramp on his home and the approval of entitlements for other injuries.
123. On his release, Mr. Campbell expects to receive approximately taxable monthly payments totalling \$10,787.50 from VAC:
 - (a) approximately \$5208.33 from a 25 year military annuity based on 50% of his earnings during his best five years;
 - (b) approximately \$2,604.17 in Earnings Loss Benefits, which represents 75% of his salary at the time of release, indexed to inflation but reduced to account for the annuity payment;
 - (c) approximately \$1,677.00 as a Permanent Impairment Allowance (PIA), available to veterans who suffer from lost job opportunities because they are permanently and severely impaired;
 - (d) approximately \$1028.00 as a Permanent Impairment Allowance Supplement (PIAS), available because Mr. Campbell is entirely unable to work;
 - (e) approximately \$170 a month as a VAC Clothing Allowance; and
 - (f) approximately \$100 a month from the Veterans Independence Program (VIP).
124. On release, Mr. Campbell will be in a position of net earnings loss. The amount of the VAC payments exceeds Mr. Campbell's current pay, but of the payments detailed above, only the annuity and the ELB are considered earnings replacement. The PIA, PIAS, Clothing Allowance, and VIP benefits are intended to help off-set the additional costs associated with a severe disability. In other words, \$2,975.00 of Mr. Campbell's expected monthly income cannot be considered "earnings replacement".
125. Mr. Campbell suffered a catastrophic injury that ended his upwards career as a senior decorated Canadian Forces Member. As a result of his service injuries, Mr. Campbell is assessed as being "permanently and severely impaired", with no expectation of transition to gainful civilian employment. He is incapable of earning a gainful income and will most certainly suffer financial distress in the future as family needs far exceed their reduced means.

F. Kevin Albert Matthew Berry

126. Kevin Berry is 29 years old and lives in Port Moody, British Columbia.
127. Mr. Berry served in the Canadian Forces from September 7, 2001, until September 12, 2004, when he was honourably discharged at the end of his three-year basic enlistment in the Army.
128. Mr. Berry served in the 3rd Battalion, the Royal Canadian Regiment, as a light machine gunner.
129. Mr. Berry served in Afghanistan from August 12, 2003 until February 13, 2004, as part of Operation Athena in Kabul.
130. Mr. Berry turned 20 years old less than 4 weeks before his Battalion was deployed overseas.
131. During his tour in Afghanistan. Mr. Berry's unit suffered three Killed in Action ("KIA") and suffered several seriously wounded.
132. During an emergency dismount from an Iltis Jeep while on an otherwise routine patrol, Mr. Berry tore the meniscus in both his knees and strained both his MCLs. As a result of his injuries, Mr. Berry was instructed by the Unit Medical Officer to cease patrolling.
133. However, due to high operational tempo and the permanent shortage of personnel resulting from a mandated 25% leave policy, it was necessary for Mr. Berry to continue his duties. Mr. Berry was required to patrol the streets of Kabul in knee braces carrying 15 kilograms of mission-critical equipment and supplies, 30 kilograms of body armour, fighting order, 1000 rounds of ammunition, radios, and other equipment.
134. As a result of Mr. Berry's duties, there was long-term damage done to his knees including, but not limited to, patella-femoral pain syndrome and osteo-arthritis. In addition, Mr. Berry suffered from tinnitus in his ears.
135. Mr. Berry received a pension from VAC under the *Pension Act* as his claim for his injuries was made prior to the enactment of the New Veterans Charter in 2006. Mr. Berry receives a monthly pension of \$636.87 based on his percentage of disability, pain and suffering. This amount will be paid monthly, for life, and is tax free. The amount will increase if Mr. Berry marries and with each child his marriage produces.
136. Unfortunately, Mr. Berry's injuries were not limited to physical ones. In or around 2005, he began to notice that he was having psychological issues. Mr. Berry spoke to a psychologist who suggested that he may have PTSD. However, because Mr. Berry was applying to become a police officer at the time he did not seek treatment for fear that a diagnosis of PTSD would affect his future employment. By 2009, however, Mr. Berry began to have severe panic attacks and flashbacks.

137. After his return from Afghanistan in 2004, Mr. Berry began to abuse alcohol, something he had no history of doing. On or about May 9, 2011, Mr. Berry's difficulties led him to enter a substance treatment facility.
138. On or about June 22, 2010, Mr. Berry's psychologist, Dr. Hearn, by way of letter to VAC, diagnosed Mr. Berry with PTSD, Chronic Major Depressive Episode, alcohol dependence, panic disorder and agoraphobia and Attention Deficit Hyperactivity Disorder.
139. In and around the fall of 2009, Mr. Berry attempted to make contact with VAC regarding his PTSD. Despite several attempts to receive assistance from VAC, Mr. Berry was not seen by a counsellor until March 2010. By this point Mr. Berry's life had unravelled considerably as his symptoms were affecting his relationships and ability to work and function.
140. As a result of his symptoms, Mr. Berry quit his job on May 21, 2010, and he has not worked since.
141. Mr. Berry is on a 5 year term for the Earnings Loss Benefits program for veterans who cannot work due to disability. Prior to Bill C55 becoming law, Mr. Berry received \$3124.92 a month to live on prior to claw backs, discussed below. This amount represents 75% of his salary as a Private in 2004, indexed to 2012. The Earnings Loss Benefits Program does not include a Cost of Living Allowance for personnel living in major cities.
142. Since 2004 Mr. Berry has been receiving a pension of \$636.87 a month under the *Pension Act* for the injury to his knees and ears. However, this amount is subtracted from his Earnings Loss Benefits so he receives \$2,488.05 a month under the Earnings Loss Benefits and \$636.87 under the *Pension Act*. The government has made indications that it may cease this practice of clawing back, however as at the time of filing, this practice has continued.
143. The amount of Mr. Berry's Earnings Loss Benefits will be further scaled back if he gains any income from any other source.
144. With respect to Mr. Berry's lump sum payment under the New Veterans Charter, Mr. Berry began his paperwork for his claim for PTSD following his meeting with VAC in March 2010.
145. On or about December 13, 2010, Mr. Berry received correspondence from VAC advising him that because his condition had not yet stabilized they would be granting him an initial minimum assessment of 10% and awarding him a lump sum payment of \$27,607.97. Mr. Berry was informed that his VAC District Office would contact him in six months, June 2011, to arrange a medical exam or to obtain further information from his doctor or health care professional.
146. On or about April 30, 2012, Mr. Berry received \$56,661.68 as his second and final lump sum settlement from VAC for his PTSD. Mr. Berry has been reassessed at 28% disability, comprised of:

(a) a medical impairment rating of 25; and

(b) a quality of life rating of 3,

effective April 19, 2012.

147. There were numerous delays in processing Mr. Berry's lump sum payments and as a result Mr. Berry incurred significant debt while waiting for these payments. Mr. Berry owed \$26,545.65 in debt, and paid this debt with funds from his lump sums. As a result of this and other expenses that arose as a result of his injuries, Mr. Berry is now left with less than \$10,000 from his lump sum payments.
148. Mr. Berry completed his term of service in 2004. Now, eight years later, he is unable to work and while he is attempting to gain an education, he has had to scale back his course load to two courses as a result of the effects of his PTSD.
149. Mr. Berry was awarded approximately \$85,000 under the New Veterans Charter for all losses arising from his the PTSD he suffers as a result of his service, all of which was carried out before the New Veterans Charter's enactment.
150. The amounts awarded to Mr. Berry are an inadequate reflection of his pain and suffering, and in addition or in the alternative, these amounts inadequately account for the loss of earning capacity Mr. Berry has sustained and will sustain, nor do they account for any of the other typical heads of damages that he would have been awarded by a Court in any civil claim.

G. Bradley Darren Quast

151. Bradley Darren Quast is a 23 year old reservist in the Canadian Forces. He holds the rank of Corporal in the South Alberta Light Horse Regiment. Mr. Quast joined the Canadian Forces in 2007.
152. On or about 2009, Mr. Quast served a tour of duty in Afghanistan on a Class C contract. He wears a Sacrifice Medal in recognition of injuries sustained during his service in Afghanistan.
153. Mr. Quast had aspirations to become a police officer and SWAT team member with the Calgary Police Service. Prior to his deployment to Afghanistan, he was a student at Medicine Hat College enrolled in the Police and Security Diploma Program. He had completed one and a half years of the two year program, and planned to complete the program on his return from Afghanistan.
154. Prior to his deployment, Mr. Quast was physically active. He enjoyed playing sports such as baseball, football, fencing, and paintball.
155. On or about December 30, 2009, Mr. Quast and his platoon were deployed on a light armoured patrol in Kandahar City. As the vehicles were returning to base, Mr. Quast was sitting in the body of a light armoured vehicle (LAV) with members of his platoon, a civilian journalist, and a civilian from the Canadian International Development Agency.

156. The LAV was suddenly hit with a powerful explosion from an IED. The 20 tonne vehicle was thrown into the air and landed upside down in multiple pieces.
157. Mr. Quast was extremely disoriented following the blast. He found himself lying amongst deceased and dismembered victims of the blast. People were screaming and Mr. Quast saw injured and dying comrades strewn about the blast sight.
158. The explosion killed four soldiers, as well as journalist Michelle Lang, and left five others, including Mr. Quast, seriously wounded.
159. Mr. Quast felt intense pain and rapid swelling in his right foot. He forced off his right boot to make way for the swelling and could see bones sticking out of his skin.
160. Mr. Quast sustained extensive physical injuries in the blast. His injuries included, but are not limited to, a tibia/fibula fracture in his right leg, multiple fractures in his right foot, a fractured and dislocated right ankle, and a lower back strain.
161. Following the explosion, Mr. Quast was airlifted to the Role 3 hospital at the Kandahar Airfield, where he underwent surgery to attach an external fixator to his right foot. Soon after that surgery, he was airlifted to Bagram airbase, where he underwent another surgery on his right leg.
162. The following day Mr. Quast was airlifted to the Landstuhl Regional Medical Centre in Germany. He stayed there for approximately one week and underwent multiple surgeries to his right leg.
163. On or about January 8, 2010, Mr. Quast was flown from Germany to Edmonton, where he was admitted into the University of Alberta Hospital.
164. Mr. Quast underwent multiple surgeries to reconstruct his right foot while at the University of Alberta Hospital. In order to close the wounds, donor skin was taken from Mr. Quast's right thigh for multiple grafts on his right foot.
165. On or about January 20, 2010, Mr. Quast was released from the University of Alberta Hospital and went to stay with his parents in Medicine Hat, Alberta.
166. Mr. Quast was confined to a wheelchair until April 2010 while his right leg and foot recovered.
167. In or around April 2010, Mr. Quast was posted to the Joint Personnel Support Unit. He moved to Edmonton to be closer to the unit so that he could receive supports from the Canadian Forces and military doctors.
168. Mr. Quast began physiotherapy and rehabilitation programs at CFB Edmonton around April 2010 and continued participating in these programs until approximately April 2011.
169. Mr. Quast underwent another surgery to his right foot on or about August 3, 2011. The purpose of this surgery – a tarsometatarsal fusion - was to fuse a joint in his mid foot, and

it involved taking a bone graft from his pelvis. Following the surgery, Mr. Quast underwent several months of physiotherapy.

170. Mr. Quast is scheduled to undergo additional surgery to his right foot in the spring of 2013 in order to perform another tarsometatarsal fusion and remove a broken screw.
171. As a consequence of the blast, Mr. Quast experiences a number of sequelae, including but not limited to, tinnitus and patellofemoral syndrome in both of his knees.
172. Mr. Quast suffers from daily pain in his right leg and foot. His ankle and midfoot ache throughout day to day activities. Mr. Quast sometimes takes over-the-counter pain medication, but this provides only temporary relief.
173. Mr. Quast also experiences arthritis in the joints located in his right midfoot. He is unable to spend more than a half hour on his feet without taking a break.
174. In or around June 2010, Mr. Quast began seeing a psychologist at CFB Edmonton. He was subsequently diagnosed with PTSD and Major Depressive Disorder.
175. In January 2012, Mr. Quast enrolled at Grant MacEwan University in the Police and Investigations Diploma Program. He aspires to complete the diploma and pursue a Bachelor of Science in Criminal Justice.
176. However, as a consequence of his injuries, Mr. Quast may never be able to meet the physical requirements to become a police officer.
177. Mr. Quast is currently serving in the Canadian Forces on a Class C contract and is designated to be in the Permanent Medical Category. He has been informed that he will be medically released from the Canadian Forces, but he does not have a release date.
178. In early 2010, Mr. Quast made applications to VAC for disability awards for his injuries.
179. On or about June 29, 2010, Mr. Quast received a letter from VAC detailing its initial assessment of his injuries and awarding him a \$55,215.94 lump sum payment for his injuries in lieu of a disability pension. VAC awarded this amount based on the following breakdown:
 - (a) fractured right tibia – 5% comprised of:
 - (i) a medical impairment rating of 3; and
 - (ii) a quality of life rating of 2;
 - (b) fractured right fibula – 5% comprised of:
 - (i) a medical impairment rating of 3; and
 - (ii) a quality of life rating of 2;
 - (c) fractures to cuneiforms in right foot – 3% comprised of:

- (i) a medical impairment rating of 1; and
 - (ii) a quality of life rating of 2;
 - (d) fractures and dislocations to metatarsals in right foot – 3% comprised of:
 - (i) a medical impairment rating of 1; and
 - (ii) a quality of life rating of 2;
 - (e) skin graft to right foot – 2% comprised of:
 - (i) a medical impairment rating of 1; and
 - (ii) a quality of life rating of 1.
180. As his injuries were not yet stable, VAC stated that it could not yet assess the total extent of Mr. Quast’s disability.
181. In early 2011, Mr. Quast made additional applications to VAC for disability awards for injuries not considered in the first assessment, including tinnitus, a lumbar back strain, patellofemoral syndrome in both knees, PTSD, and Major Depressive Disorder.
182. On or about April 4, 2011, Mr. Quast received a letter updating his injury assessment and awarding him an additional lump sum payment of \$42,797.92. VAC awarded this amount based on the following breakdown:
- (a) all injuries to right foot – 17% comprised of:
 - (i) a medical impairment rating of 15; and
 - (ii) a quality of life rating of 2;
 - (b) tinnitus – 6% comprised of:
 - (i) a medical impairment rating of 5; and
 - (ii) a quality of life rating of 1.
183. VAC initially declined to make an award for Mr. Quast’s psychological injuries as they were not disclosed in his service record. Mr. Quast reapplied for disability benefits for PTSD and Major Depressive Disorder around September 2011.
184. In or around May 2012, VAC awarded Mr. Quast a lump sum payment in the amount of \$102,657.94 as compensation for his PTSD and Major Depressive Disorder. VAC has not yet provided an assessment letter detailing its process for arriving at the amount of the award.

185. Additionally, Mr. Quast must participate in additional assessments to the injuries to his right foot, as VAC is not satisfied that it has enough information to determine the total extent of his disability.
186. The amounts awarded to Mr. Quast are an inadequate reflection of his pain and suffering, and in addition or in the alternative, these amounts inadequately account for the loss of earning capacity Mr. Quast has sustained, or any of the other typical heads of damages that he would have been awarded by a Court in any civil claim.

H. Aaron Michael Bedard

187. Aaron Michael Bedard is 39 years old and resides in Chilliwack, British Columbia. Mr. Bedard is a former combat engineer in the position of recon driver who served with the 1st Battalion, Princess Patricia's Canadian Light Infantry.
188. Mr. Bedard joined the Canadian Forces at the age of 28. He served eight years with the Canadian Forces, including one tour of duty in Afghanistan.
189. Prior to his tour in Afghanistan, Mr. Bedard was in excellent physical and mental health. He enjoyed an active lifestyle including long distance running, skiing, surfing, scuba diving and intermediate mountaineering.
190. On April 19, 2006, while serving as part of Operation Archer Task Force Orion, Mr. Bedard sustained a TBI and whiplash when an anti-tank mine was triggered by an armoured vehicle he and his fellow soldiers were travelling in. The explosion permanently rendered the other five soldiers unfit for combat operations. Apart from Mr. Bedard, all of the occupants of that armoured vehicle had to be evacuated by helicopter.
191. As a result of the explosion, Mr. Bedard experienced severe constant headaches and whiplash. However, not wanting to abandon his mission, Mr. Bedard chose to remain in Afghanistan and continued to serve for the rest of his tour despite his injuries.
192. Mr. Bedard experienced two more events involving explosions of lesser intensity in July and August 2006.
193. During Mr. Bedard's tour in Afghanistan, the Canadian Forces and the North Atlantic Treaty Organization (NATO) suffered a high number of casualties. In addition, several of the Afghan soldiers, including ones whom he and his battle group had mentored and fought alongside, were killed in action.
194. Mr. Bedard's Battle Group was awarded the Commander-in-Chief Unit Commendation for their efforts. This is the highest commendation a unit can receive in Canada.
195. After the initial injury in April 2006, Mr. Bedard came to rely on heavy doses of painkillers to manage the pain in his neck and back for the remainder of his tour. Mr. Bedard returned from his tour in August 2006.
196. In or around November 2006, Mr. Bedard was ordered by his immediate commanders to have his neck and head examined. Doctors diagnosed Mr. Bedard as having sustained a

TBI. He began taking Gabapentin for his TBI and neck/back injury in December 2006, eight months after the injury occurred.

197. In or around August 2007, one year after returning from Afghanistan, Mr. Bedard was deemed unfit for duty. In the period leading up to August 2007, in addition to taking painkillers for his neck and back and medication for his TBI, Mr. Bedard began relying heavily on alcohol as a mechanism for coping with both the psychological and physical trauma related to his tour. Mr. Bedard was diagnosed with PTSD in the fall of 2007.
198. Mr. Bedard was medically released on March 12, 2010.
199. Mr. Bedard did not cope well with the realization that his intended career was terminated by the Canadian Forces. He found it difficult to blend back into civilian society. Mr. Bedard began to increasingly suffer from feelings of uselessness and isolation. He isolated himself and increasingly turned to alcohol. Soon, Mr. Bedard began contemplating taking his own life. Within months of returning to his hometown of Coquitlam BC, Mr. Bedard consumed alcohol and contemplated suicide daily.
200. Since 2007, Mr. Bedard has been receiving weekly treatment from three mental health professionals.
201. In or around 2008, Mr. Bedard made a claim to VAC for the injuries he sustained during his tour, including but not limited to:
 - (a) TBI;
 - (b) neck injury;
 - (c) back injury; and
 - (d) PTSD.
202. In early 2009, Mr. Bedard received a letter from VAC assessing his disability at 75% and awarding him a \$199,764.90 lump sum payment for his injuries.
203. VAC awarded this amount based on the following breakdown:
 - (a) chronic cervical strain – 5%;
 - (b) PTSD – 54%; and
 - (c) cervicogenic headaches (tentative diagnosis) – 16%.
204. The amounts awarded to Mr. Bedard are an inadequate reflection of his pain and suffering, and in addition or in the alternative, these amounts inadequately account for the loss of earning capacity Mr. Bedard has sustained and will sustain, nor do they account for any of the other typical heads of damages that he would have been awarded by a Court in any civil claim.

205. In addition, Mr. Bedard receives \$42,915 per year in long-term disability until the age of 65 under Service Income Security Insurance Plan ("SISIP").
206. As a result of his injuries, however, Mr. Bedard has been left with permanent medical impairment and he continues to endure pain and suffering and a loss of enjoyment of life. As a result of the permanency of his injuries, he will continue to require care in the future.
207. Upon return to Canada in 2006, Mr. Bedard was employed at his Canadian Forces home unit as part of 1 Combat Engineer Regiment. In August 2007 he was removed from active duty and placed on sick leave. Mr. Bedard attempted to return to his home unit again in March 2008 but after three months was placed in the Joint Personal Support Unit until his release in March 2010.
208. The Canadian Forces have failed to accommodate Mr. Bedard with alternative employment. Mr. Bedard's ability to find alternative suitable employment on his own has been negatively affected by his disabilities. As a result of his injuries he is less capable of earning an income and will continue to suffer income loss in the future.

I. Canadian Forces - Historic Legal Framework

209. Pursuant to section 15 of the *Constitution Act, 1867*, "The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue to be vested in the Queen".
210. Pursuant to section 14 of the *National Defence Act* (R.S.C., 1985, c. N-5), the Canadian Forces are the armed forces of Her Majesty raised by Canada and consist of one Service called the Canadian Armed Forces.
211. The Canadian Forces are governed by the *Queen's Regulations and Orders for the Canadian Forces* enacted under the *National Defence Act*.
212. The Canadian Forces consist of:
 - (a) the Regular Force which consists of officers and non-commissioned members who are enrolled for continuing, full-time military service (pursuant to s. 15(1) of the *National Defence Act*);
 - (b) the Reserve Force, that consists of officers and non-commissioned members who are enrolled for other than continuing, full-time military service when not on active service (pursuant to s. 15(3) of the *National Defence Act*); and
 - (c) the Special Force established by the Governor in Council in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty, the North American Aerospace Defence Command Agreement or any other similar instrument to which Canada is a party (pursuant to s. 16(1) of the *National Defence Act*).

213. The Canadian Forces also consists of such units and other elements as are from time to time organized by or under the authority of the Minister of National Defence.
214. VAC is a Ministry of the Government of Canada under the responsibility of the Minister of Veterans Affairs with responsibility, or shared responsibility, for the administration of the following enactments:
- (a) *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c 21;
 - (b) *Children of Deceased Veterans Education Assistance Act*, R.S.C. 1985, c. C-28, as amended;
 - (c) *Civilian War-related Benefits Act*, R.S.C. 1985, c. C-31, as amended;
 - (d) *Department of Veterans Affairs Act*, R.S.C. 1985, c. V-1, as amended;
 - (e) *Pension Act*, R.S.C. 1985, c. P-6, as amended;
 - (f) *Returned Soldiers' Insurance Act*, S.C. 1920, c. 54, as amended;
 - (g) *Soldier Settlement Act*, R.S.C. 1927, c. 188, as amended;
 - (h) *Special Operators War Service Benefits Act*, R.S.C. 1952, c. 256, as amended;
 - (i) *Supervisors War Service Benefits Act*, R.S.C. 1952, c. 258, as amended
 - (j) *Veterans Benefit Act*, R.S.C. 1970, c. V-2, as amended;
 - (k) *Veterans Insurance Act*, R.S.C. 1970, c. V-3, as amended;
 - (l) *Veterans' Land Act*, R.S.C. 1970, c. V-4, as amended;
 - (m) *Veterans Review and Appeal Board Act*, S.C. 1994-95, c. 17, 18, as amended;
 - (n) *War Services Grants Act*, R.S.C. 1970, c. W-4, as amended;
 - (o) *War Veterans Allowance Act*, R.S.C. 1985, c. W-3, as amended; and
 - (p) *Women's Royal Naval Services and the South African Military Nursing Service (Benefits) Act*, R.S.C. 1952, c. 297, as amended.
215. In addition to programs provided by VAC, veterans are eligible for a pension and benefits under SISIP, the private insurance provider for Canadian Forces members which provides the following benefits:
- (a) a pension, called the Canadian Forces Superannuation, is provided to all veterans with a minimum of ten years of service and is based on pre-release salary; and

(b) the Long-Term Disability benefit, which is provided to veterans who were medically released with 75 percent of their pre-release salary, minus all other income (which includes employment income, Canadian Forces Superannuation and the *Pension Act* disability pensions), until the veteran reaches age 65.

216. The New Veterans Charter was enacted in April of 2005 and came into force on April 1, 2006.

217. In September 2010, Veterans Affairs Canada announced changes to the New Veterans Charter relating to financial benefits. The changes were implemented effective October 3, 2011, by the *Enhanced New Veterans Charter Act*, S.C. 2011, c. 12.

J. Canada's Covenant to Service Members and Veterans

218. When members of the Canadian Forces put on the uniform of their country they make an extraordinary personal commitment to place the welfare of others ahead of their personal interests, to serve Canada before self and to put themselves at risk, as required, in the interests of the nation. A veteran, whether regular or reserve, active or retired, is someone who, at one point in their life, wrote a blank cheque made payable to "the Government of Canada," for an amount of "up to and including their life." This commitment to make the ultimate sacrifice reflects their honour in the service of their country.

219. The uniqueness of military service extends to the experiences of military families resulting from such service.

220. There is no equivalent profession to that of service in the Canadian Forces. Because of this extraordinary commitment, there is a long-recognized covenant that exists between the Canadian nation, the nation's people and those who hazard their lives in its service as members of the armed forces.

221. This Social Covenant or Social Contract between Canada and those who serve it guarantees military members adequate recognition and benefit for the sacrifices they make and the service they render Canada is of paramount importance in a country that relies upon the voluntary recruitment of its youth to fill its military ranks.

222. Members of the Canadian Forces are part of Canadian society, not a standing army separate from it. Potential recruits may well reconsider the choice of a physically challenging and potentially hazardous military occupation if it becomes evident to them that an injury or illness may result in the termination of one's career without appropriate compensation or provision for adequate training and preparation for a return to civilian employment.

223. Similarly, serving members are likely to be much less eager to place themselves in harm's way if they perceive that a resulting injury, disability, and release from the Canadian Forces does not, with certainty, result in immediate treatment and adequate compensation.

224. Members of the Canadian Forces are entitled to expect that if they sustain illness or injury in the line of duty, they will be taken care of by the country they serve. If the Canadian Forces is to retain and reinforce the loyalty and commitment of its members and attract new recruits, Canadian Forces policies must strive to ensure that such expectations are well met.
225. Canada's covenant to those who serve in the Canadian Forces is based on the following principles:
- (a) that members have their service be treated with dignity and respect;
 - (b) that members be assured of reasonable career progression;
 - (c) that the members of the Canadian Forces are fairly and equitably compensated for the services they perform and the skills they exercise in performance of their many duties with compensation that properly takes into account the unique nature of military service;
 - (d) that the members of the Canadian Forces be provided with appropriate equipment and kit commensurate with their duties;
 - (e) that all members and their families are provided with ready access to suitable and affordable accommodation which conform to modern standards and the reasonable expectations of those living in today's society;
 - (f) that military personnel and their families be provided with access to a full and adequate range of support services, offered in both official languages, that will ensure their financial, physical and spiritual well-being;
 - (g) that suitable care and compensation be provided to members, veterans and those injured in the service of Canada through programs and services required to meet the complex needs of individual members;
 - (h) that military personnel and their families be provided with assistance in a seamless transition from military to civilian life;
 - (i) that the guiding principle for the recognition, care and compensation must always be compassion; and
 - (j) that Canada provides appropriate recognition and commemoration for the service and sacrifice of military personnel and their families.
226. The covenant is of long and consistent standing and has been recognized by the House of Commons Standing Committee on National Defence and Veterans Affairs in a 1998 Committee Report entitled "Moving Forward: A Strategic Plan for Quality of Life Improvements in the Canadian Forces" as traditionally existing between the military and government and by extension with the Canadian public at large.

227. As Canadian troops prepared for the Battle of Vimy Ridge in 1917, they were visited by the Prime Minister, Sir Robert Borden, who made this commitment on behalf of their country:

“You can go into this action feeling assured of this, and as the head of the government I give you this assurance, that you need have no fear that the government and the country will fail to show just appreciation of your service to the country in what you are about to do and what you have already done. The government and the country will consider it their first duty to prove to the returned men its just and due appreciation of the inestimable value of the services rendered to the country and Empire; and that no man, whether he goes back or whether he remains in Flanders, will have just cause to reproach the government for having broken faith with the men who won and the men who died”.

228. Later in 1917 the Borden’s Unionist national unity Canadian government made a further solemn commitment to those in uniform that:

“The men by whose sacrifice and endurance the free institutions of Canada will be preserved must be re-educated where necessary and re-established on the land or in such pursuits or vocations as they may desire to follow. The maimed and the broken will be protected, the widow and the orphan will be helped and cherished. Duty and decency demand that those who are saving democracy shall not find democracy a house of privilege, or a school of poverty and hardship.”

229. Subsequently, Canadian veteran legislation included paragraphs reiterating the recognition by Canada of the Social Contract or Social Covenant and the obligation of the nation to be generous towards veterans and those who serve in the armed forces of the country. Examples are:

Pension Act, R.S.C., 1985, c. P-6,

Construction

2. The provisions of this Act shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to provide compensation to those members of the forces who have been disabled or have died as a result of military service, and to their dependants, may be fulfilled;

War Veterans Allowance Act, R.S.C., 1985, c. W-3

Construction

1.01 The provisions of this Act shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to those who have served their country so well and to their dependants may be fulfilled; and

Veterans Review and Appeal Board Act, S.C. 1995, c. 18

Construction

3. The provisions of this Act and of any other Act of Parliament or of any regulations made under this or any other Act of Parliament conferring or imposing jurisdiction, powers, duties or functions on the Board shall be liberally construed and interpreted to

the end that the recognized obligation of the people and Government of Canada to those who have served their country so well and to their dependants may be fulfilled.

230. Also reflective of the Social Contract or Social Covenant are paragraphs included in Canadian veteran legislation relating to the Benefit of the Doubt standard, a concept that describes the burden of proof that veterans' applications must satisfy to establish their claims for compensation or entitlements.
231. In September 1965 the Canadian government appointed a commission headed by Justice Mervyn Woods of the Saskatchewan Court of Appeal to review the organization and work of the Canadian Pension Commission. The Woods Commission Report went to great length to discuss the Benefit of the Doubt and made recommendations that led directly to the wording of Benefit of the Doubt as it was presented in subsequent legislation.
232. The Woods Commission Report made it clear that the original intent of this concept was to relieve the pensioner or applicant of the requirement to adduce conclusive proof. This was to ensure proper consideration in cases where documentary evidence was limited or not available. The Benefit of the Doubt policy in regard to rules of evidence should therefore be "generous":
 - (a) When the evidence is considered and all reasonable inferences are made in favour of pensioners or applicants, there could very well be instances when applications will be allowed even though the preponderance of evidence is against them. This is a very important consideration, and one that is very difficult for members of the legal profession to accept.
 - (b) Proceedings are by way of enquiry and not trial, and hence there are not "two sides". It is wholly inappropriate to equate Benefit of the Doubt to "beyond a reasonable doubt", burden of proof in criminal courts, or the "balance of probabilities" applied in civil courts.
 - (c) The weight of evidence should not be discounted because it has been arrived at by inference from secondary or indirect evidence.
 - (d) The question of credibility should seldom arise, particularly with medical evidence given in a professional context.
233. The 1998 Report of the House of Commons Standing Committee on National Defence and Veterans Affairs entitled "*Moving Forward: A Strategic Plan for Quality of Life Improvements in the Canadian Forces*" stated that the national commitment or social contract between Canada and the members of the Canadian Forces must be based on the following concrete principles:
 - (a) that the members of the Canadian Forces are fairly and equitably compensated for the services they perform and the skills they exercise in performance of their many duties. And, that such compensation properly take into account the unique nature of military service;

- (b) that all members and their families are provided with ready access to suitable and affordable accommodation. Accommodation provided must conform to modern standards and the reasonable expectations of those living in today's society;
 - (c) that military personnel and their families be provided with access to a full and adequate range of support services, offered in both official languages, that will ensure their financial, physical and spiritual well-being;
 - (d) that suitable recognition, care and compensation be provided to veterans and those injured in the service of Canada. Here, the guiding principle must always be compassion; and
 - (e) that members be assured reasonable career progression and that in their service they be treated with dignity and respect. In addition, they must be provided with the appropriate equipment and kit commensurate with their tasking.
234. The Social Covenant or Social Contract between Canada and those who serve has also been reflected in the representations of Canadian Forces recruiters who met with Class members prior to their enlistment, including representations that members of the Canadian Forces injured in their service would be fairly and adequately compensated, such compensation including adequate provision for return to civilian life and adequate provision for the maintenance of the Member's spouse and children. These representations were relied upon by Class members and were critical to the individual Class members' decision to join the Canadian Forces.
235. The 1998 Report of the House of Commons Standing Committee concluded that:
- True commitment is rarely one sided. If we are to ask our Forces to commit to the tasks we set for them in pursuit of our national interests, then they have every right to expect us to honour our side of the bargain
- and that ultimate responsibility to ensure that Canada's military personnel are well equipped, properly cared for and equitably compensated belongs to Parliament and to public opinion not just to the government of the day.
236. Many Class members enlisted in the Canadian Forces at the time when the *Pension Act* governed their compensation for injuries and disabilities but later found that they were to be awarded much less compensation under the New Veterans Charter.
237. The existence of a disability pension was an essential condition of the relationship between members and the Canadian Forces following enlistment, as evidenced by its inclusion as a term in the Conditions of Service.
238. These Conditions of Service were unilaterally changed by Parliament with the enactment of the New Veterans Charter during a period at which Canada was at war sustaining heavy casualties and injuries.

K. Constitutional Foundation – The Honour of the Crown

239. Her Majesty the Queen is the “fount of justice” and the “fount of honour”, the source of all honours and dignities in Canada.
240. The honour and valour of members of the Canadian Forces, including the Plaintiffs and the proposed Class members, who have displayed gallantry and devotion to duty in combat or whose specific achievements have brought honour to the Canadian Forces and to Canada in the service of their country and their extraordinary personal commitment to place the welfare of Canada before self is recognized by the awarding of military honours by Her Majesty the Queen.
241. With respect to those who serve and have served Canada in the Canadian Forces at the risk of their lives, the Honour of the Crown is paramount because it is always assumed that the Crown intends to fulfill its promises, particularly promises such as the social covenant or contract between Canada and those who hazard their lives in its service.
242. The Crown’s duty to act honourably arose when it voluntarily assumed this duty to those who have served Canada at the risk of their lives and bodies and in recognition of pre-existing duties and responsibilities throughout the nation’s history and at common law.
243. The Plaintiffs and Class members are entitled to assume that the Crown intends to fulfil its promises and will engage in a process of honourable consultation, at a minimum a duty to discuss important decisions, with those affected by the promise and honourable efforts to reconcile and accommodate the promise with other rights and interests.
244. The fate and Honour of the Crown is pledged to those who serve and have served. The Honour of the Crown is not limited to the interpretation of legislation or the application of enactments but also refers to the same essential commitment that all Canadians understand as embodied in the words, “justice” and “fairness.”
245. The historical roots of the principle of the Honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems.
246. Honour truly lies in loyalty to the fundamental values that are behind the Crown’s authority so that in every action and decision the women and men who represent the Crown in Canada should conduct themselves as if their personal honour and family names depended upon it.
247. The idea of the Honour of the Crown is not merely an empty slogan, but absolutely central to the historical relationship between the Sovereign and those who put their lives and bodies at risk for Canada.
248. The Plaintiffs say that the Honour of the Crown is one of the fundamental principles underlying the Canadian constitution.
249. Where, as is the case with those who serve and have served, including the Plaintiffs and proposed Class members, the Crown has assumed discretionary control over specific

interests, the Honour of the Crown gives rise to a fiduciary duty in relation to specific interests flowing from their service to the country.

250. The fiduciary duty arising from the Honour of the Crown requires the Crown to keep the promises that Canada has made in its Social Covenant or Social Contract with those who serve.

L. The Developing Role of Canada's Armed Forces

251. Canada has recognized the service that Canadian members of the armed services gave and the sacrifices they made during the two World Wars of the twentieth century (1914-18 and 1939-45), the Korean War (1950-53), and other military operations since 1950 in the continuing cause of national defence, world peace, and security.
252. During the First World War, more than 600,000 Canadians enlisted and the number approaches 700,000 when enlistment in Canadian units outside the Canadian Expeditionary Force and in the British forces is taken into account. Of these, the war dead numbered nearly 67,000.
253. During the Second World War, 1,032,538 men and 49,327 women enlisted and served in the armed forces during the war, of whom 45,000 lost their lives and 53,145 were wounded and required special care and re-establishment assistance.
254. As Canada ramped up mobilization efforts for the Second World War on December 8, 1939, a Cabinet committee on demobilization was appointed to define the obligation of the state "to those whose lives were interrupted by their service to their Country". The effort led to Privy Council order 7633 of October 1, 1941 which promised a rehabilitation benefit to everyone who served in the armed forces during the war.
255. After the Second World War, a comprehensive program of benefits devised for the veterans of the Second World War was given an all-encompassing name - the Veterans Charter.
256. This Veterans Charter program acknowledged the national responsibility to those who serve their country and reminded Canadians that the armed forces are a vital Canadian national institution.
257. Around 27,000 Canadians served in Canada's components to the United Nations' forces during the Korean War. Approximately 516 never returned.
258. Over the whole period of the operations in Korea the majority of those serving were members of the regular Canadian armed forces, a large number of whom remained in service. As a result, the rehabilitation issues were in many respects different in their nature and scope from those that followed World War II.
259. These differences meant that, although all the statutes relating to the Veterans Charter remained on the books, VAC did not concern itself with the rehabilitation and re-establishment of former members of the Canadian Forces. Consequently, the

government's commitment to deliver these services to veterans through Veterans Affairs atrophied.

260. Since the Korean War, the men and women of the Canadian Forces have defended Canada's territory in concert - at home and abroad - with NATO and North American Aerospace Defence Command (NORAD) allies and have carried out hazardous, difficult and demanding peacekeeping and peacemaking duties in many parts of the world. These missions include:

- (a) Emergency Force (Egypt and Sinai);
- (b) Truce Supervision Organization in Palestine (UNTSO);
- (c) Observer Group in Lebanon (UNOGIL);
- (d) Military Observer Group in India and Pakistan;
- (e) Congo;
- (f) Temporary Executive Authority in West New Guinea;
- (g) Yemen Observer Mission;
- (h) Cyprus;
- (i) India/Pakistan Observation Mission;
- (j) Emergency Force Middle East;
- (k) Disengagement Observer Force in Golan Heights;
- (l) Interim Force in Lebanon;
- (m) Military Observer Group in Iraq and Iran;
- (n) Transition Assistance Group in Namibia;
- (o) Observer Group in Central America;
- (p) Observer Mission in Iraq and Kuwait;
- (q) Angola Verification Mission;
- (r) Mission for the Referendum in Western Sahara;
- (s) Observer Mission in El Salvador;
- (t) Protection Force in Yugoslavia;
- (u) Advance Mission in Cambodia;

- (v) Transitional Authority in Cambodia;
 - (w) Operation in Somalia;
 - (x) Operation in Mozambique;
 - (y) Observation Mission in Uganda and Rwanda;
 - (z) Assistance Mission in Rwanda;
 - (aa) Mission in Haiti;
 - (bb) Verification of Human Rights and Compliance with the Comprehensive Agreement on Human Rights in Guatemala;
 - (cc) Verification Mission in the Central African Republic;
 - (dd) Preventive Deployment Force in Macedonia;
 - (ee) Mission in Bosnia and Herzegovina;
 - (ff) Observer Group in Prevlaka;
 - (gg) Interim Administration Mission in Kosovo;
 - (hh) Observer Mission in Sierra Leone;
 - (ii) Transitional Administration in East Timor;
 - (jj) Mission in the Democratic Republic of the Congo;
 - (kk) Mission in Ethiopia and Eritrea;
 - (ll) Stabilization Mission in Haiti;
 - (mm) Operation in Côte D'Ivoire;
 - (nn) Mission in Sudan;
 - (oo) Integrated Mission in Timor-Leste; and
 - (pp) Mission with the African Union in Darfur.
261. In the period after the Second World War, the Department of Veterans Affairs changed, as did the generations of veterans it served. By the 1960s, the First World War generation was facing the problems of old age, while the Second World War generation, which had successfully been launched back into civilian life in the late 1940s, was entering middle age.
262. The 1962 Report of the Royal Commission on Government Organization, (the Glassco Commission) noted that one of the leading purposes of the Department of Veterans

Affairs - to provide care for wounded veterans - had declined in significance, and most patients in departmental hospitals were those requiring chronic or nursing-home care, with the result that in December 1963 the federal Cabinet agreed to transfer veterans' hospitals to provincial authorities.

263. The unification of the Canadian Forces took place February 1, 1968, when the Royal Canadian Navy, Canadian Army, and Royal Canadian Air Force were merged to form the Canadian Forces.
264. On March 26, 1968, the *Report of the Committee to Survey the Organization and Work of the Canadian Pension Commission* (the committee chaired by Justice Mervyn Woods of the Saskatchewan Court of Appeal) was tabled in the House of Commons by the Minister of Veterans Affairs.
265. The Report of the Committee concluded:
 - (a) that its review had been "long overdue";
 - (b) that there had been "an understandable tendency" in the Canadian Pension Commission "to let sleeping dogs lie";
 - (c) that the Pension Commission had "a propensity to be satisfied with all that is not criticized"; and
 - (d) "a tendency ... to be content with an answer to criticism that satisfies the one giving it";
 - (e) that the most serious flaw in administering the *Pension Act* was the commission's tendency "to view its operation as one which can best be carried out on the basis of providing only limited public information in regard to its policies and interpretations"; and
 - (f) the administration of the Act, on which so many Canadians depended, had about it an "air of secrecy" that "should disappear."
266. The Woods Committee found that many of its findings were similar to those of the Ralston Commission inquiry into the same matters forty years earlier.
267. In August 1969 the government responded to the Woods Report with a White Paper on Veterans Pensions, issued under the authority of Minister of Veterans Affairs and stated as follows:

"For the past 50 years, Canada has recognized and freely accepted her obligation to pay compensation for disability and death arising out of military service, in so far as it is reasonable and practicable to equate monetary values with human suffering and bereavement. This is done through the *Pension Act*... [which] provides for the payment of pensions to the disabled veteran, his widow and his orphan; and to his dependent parents, sisters and brothers. In addition, an award of pension also makes the recipient or his family eligible for other benefits. The veteran himself becomes eligible for medical treatment for his pensioned condition, special re-employment training if he needs it, war

veterans allowance, and funeral and burial grants. After his death his widow is eligible for war veterans allowance, and his pensioned children for advanced educational assistance”.

268. An amending Act implementing the reforms recommended by the Woods Report and accepted in the government White Paper received royal assent on March 30, 1971, including an amendment to the “benefit of the doubt” provisions of the Act. The amendments provided that “a pension applicant will have discharged his responsibility when he has submitted credible evidence which, if uncontradicted, should entitle his claim to succeed; that the adjudicating body should draw from the evidence all reasonable inferences in favour of the applicant; and that, when this has been done, the applicant shall be entitled to the benefit of the doubt and his claim may be allowed, even though he has not established it by a preponderance of evidence.”
269. In 1969, another important development in the evolution of Canadian Forces members’ benefits occurred when the SISIP was introduced to provide financial protection against death or injury that was not attributable to military service.
270. Over five hundred died in their service to Canada during the Cold War and an additional 115 lost their lives in other overseas military operations.
271. By the 1980’s improvements generated by the Woods Report were more than a decade old. The population of veterans also was aging. By 1985, the majority had celebrated their sixty-fifth birthday.
272. By the mid-1990s, most war veterans were well into their seventies, exceeding average life expectancy, and increasingly found themselves coping with the problems of advanced age: chronic ill health, dementia, frailty, and loss of mobility and independence. With these changes came increased demands from veterans and their families for health care, home care, and timely access to long-term care facilities.
273. Canada has been a member of NATO since its inception in 1949 and stationed substantial troops in Europe as part of its military commitments to NATO. With increased commitments to UN peacekeeping missions in Canada, NATO commitments were reduced in 1969 to an army and air force presence in Germany.
274. Following UN authorization of military force to remove Iraq from occupied territory in Kuwait, Canada made a contribution of 4,500, with a peak deployment of 2,700, Canadian Forces personnel to the 1991 Gulf War.
275. In 1993 the remaining Canadian NATO forces were withdrawn from Europe by the Canadian government following the end of the Cold War. Canadian NATO forces were actively utilized during the 1999 Kosovo War.
276. Article Five of the North Atlantic Treaty is a collective defense clause that provides that an attack on one member country is considered to be an attack on all NATO member countries, and which requires that all assist by taking such actions as collectively deemed necessary.

277. Article Five was invoked by NATO immediately after the September 11, 2001 terrorist attacks on the United States and NATO declared that the attack against the United States was an attack against all 19 members.
278. The Al Qaeda hijackers responsible for the September 11, 2001 terrorist attacks trained at camps in Taliban-controlled Afghanistan. In response, the United Nations Security Council passed Resolution 1386 which supported international efforts to eradicate terrorism in accordance with the United Nations Charter and established the International Security Assistance Force (ISAF).
279. On April 16, 2003, NATO agreed to take command of the ISAF in Afghanistan as a UN-sanctioned, NATO-led operation and did so on August 11, 2003. Forty-six nations are involved, not all of them members of NATO. Canada committed about 1,900 personnel to the theatre for two six-month rotations, making Canada the largest contributor to the force.
280. Canada has been instrumental in the Afghan theatre since Operation Enduring Freedom began in 2001 but the initial deployment returned to Canada in July 2002. The first significant deployment under ISAF occurred in the summer of 2003 in Operation Athena in the relatively safe confines of the capital city of Kabul.
281. The Department of National Defence produces estimates for the number of casualties that will be sustained by the Canadian Forces before undertaking new missions and prepared such an estimate in June 2003 for the ensuing six-month rotation of Canadian forces to Kabul, Afghanistan. Canadian Forces intelligence planners prepared their estimates based on the casualties suffered by previous members of the ISAF in Kabul. They concluded that there was a 99% probability that Canada would lose five to 10 of the 1,800 soldiers that were to be deployed to Kabul.
282. The Government of Canada has confirmed that the military had informed the government of the estimated number of Canadians that could be killed or wounded in military deployments but no estimates other than for the Kabul deployment have been made public by the government.
283. Canada began expanding its forces in Afghanistan in the summer of 2005, preparing for combat in the far more dangerous province of Kandahar where Canada assumed command of the Provincial Reconstruction Team with approximately 2,500 members of the Canadian Forces taking a lead combat role in the province of Kandahar.
284. On May 17, 2006, the Canadian mission in Afghanistan was extended for two years. On February 25, 2008, the Canadian mission was extended from 2009 to the end of 2011. In November 2010, the Canadian Government decided to extend the Canadian mission to 2014 and shift it towards a training role of Afghan national security forces.
285. The following table is a summary of the Canadian Forces' Non-Battle Injuries, Wounded in Action, Deaths and Killed in Action (KIA) statistics sustained in Afghanistan from the beginning of the mission in April 2002 to December 31, 2011:

Year	Non-Battle Injuries	Wounded In Action	Deaths (those not KIA)	Killed In Action
2002	1	8	0	4
2003	0	3	0	2
2004	5	3	0	1
2005	7	2	1	0
2006	84	180	4	32
2007	299	84	3	27
2008	187	125	5	27
2009	330	124	3	29
2010	331	86	2	14
2011	168	20	2	2
Total	1,412	635	20	138

286. VAC has adapted to the aging of Canada’s veterans of the Second World War, the Korean War and Canada’s various peace missions but the department was not prepared for the changing demographic profile of Canada’s new veterans, the culture change and the change in the needs of Canada’s modern-day veterans returning from Afghanistan.

M. Pension Act

287. Until 2006, the *Pension Act* determined financial benefit eligibility of veterans with disabilities. The benefits consisted of a number of monthly pensions and allowances. The amount was dependent on the nature of disability, through a disability assessment, marital status, and number of children.

288. The *Pension Act* was developed following World War I and has been subsequently revised and amended many times. The *Pension Act* programs were designed with the intent of compensating veterans who had served the country with the assumption that those serving in the military were “career soldiers.” Its aim was to provide financial compensation for pain that veterans experienced through disabilities acquired during their service.

289. The following financial programs are available through the *Pension Act* to veterans who were medically released before April 2005. There are other educational and service benefits available under the *Pension Act* that are not summarized here.

290. *Disability Pension, Spousal Pension, Children’s Pension*: These are the main programs available through the *Pension Act*. The disability pension is awarded based on disability, with additional support awarded to veterans with families. The amount of the pension is determined by the veteran’s disability assessment, up to a maximum monthly cap. An additional pension amount is awarded if the veteran has a spouse or common-law partner tax free. A children’s pension is awarded as well, depending on the number of children, all tax-free. All of these pensions are proportional to the disability assessment of the

veteran. The pensions are paid monthly until death, and are adjusted yearly for inflation according to the Consumer Price Index.

291. *Survivor Benefits*: When the pensioned veteran dies, the veteran's spouse and dependent children are eligible to receive the veteran's disability pension for one year. After one year, the spouse and dependent children receive a survivor pension. These pensionable amounts remain tax-free.
292. *Clothing Allowance*: This is paid to veterans whose disability causes extraneous wear and tear on clothing. It is a fixed amount tax-free, paid monthly until death, and is adjusted yearly for inflation according to the Consumer Price Index.
293. *Attendant Allowance*: This pensionable amount is for veterans who need assistance in daily living due to their physical or mental state. It is Supporting Canadian Veterans with Disabilities awarded in part to compensate informal caregivers such as family members of the veteran. It is a fixed amount, paid monthly until death, tax-free, and is adjusted yearly for inflation according to the Consumer Price Index.
294. *Exceptional Incapacity Allowance (EIA)*: This pensionable amount is awarded to veterans to compensate for loss of enjoyment of life and pain caused by a pensioned disability. Under the *Pension Act*, the amount of EIA "is based on the extent of the helplessness, pain, loss of enjoyment of life and shortened life expectancy of the pensioner." One criterion of EIA is that the veteran must have a disability assessment of 98 percent or higher. It is paid monthly until death, tax-free, and is adjusted yearly for inflation according to the Consumer Price Index.
295. *Prisoner of War Compensation*: This benefit is awarded to veterans who were held as prisoners of war for a minimum of 30 days. The amount of the award is a percentage of the disability pension based on the number of days spent as a prisoner of war. Again, this is a tax-free financial benefit.
296. *Health Benefits*: Veterans with pensioned disabilities are eligible for health care directly related to their pensioned disability. Also, low-income veterans and veterans with severe disabilities (a disability assessment of 78 percent or higher) are eligible for health benefits that are not covered under provincial plans. Veterans may also qualify for long-term care in community care facilities across Canada.

N. Service Income Security Insurance Plan

297. SISIP was introduced in 1969 through SISIP Policy 901102 as an optional plan, providing members of the Regular Force and Reserve Force with replacement income protection of a portion of their income for total disability due to non-service-related injuries and illnesses.
298. When introduced, SISIP was not a program brought in for operational conditions and special duty areas but was, essentially, a civilian program of compensation and benefits, plus life insurance.

299. SISIP is an integral part of the Department of National Defence as a division of the Canadian Forces Personnel and Family Support Services responsible for the delivery of life insurance products, financial counselling, financial planning services, financial management and education programs, in addition to administering the Long-term Disability and Vocational Rehabilitation Plan.
300. The Long-term Disability insurance provided for under SISIP Policy 901102 is an “administrative services only” plan of insurance not underwritten by the insurer administering the plan but rather completely funded by the premiums remitted by its members and plan sponsor and the claims made upon the SISIP plan are paid out of the pool of funds available from the premiums remitted.
301. The Chief of the Defence Staff of the Canadian Forces is the policy owner of SISIP Policy 901102. The Treasury Board has full governance of the plan. As a result, SISIP cannot pay benefits in excess of the various amounts authorized by the Treasury Board with respect to claims and the Vocational Rehabilitation Program.
302. The Maritime Life Assurance Company initially managed SISIP under SISIP Policy 901102. Manulife then purchased Maritime. Manulife continues to administer SISIP and receives fees for the services provided.
303. The management of SISIP includes providing all administrative services such as all claims adjudication, the payment of monthly Long-Term Disability benefits, and management of the Vocational Rehabilitation Plan.
304. In 1976 coverage under SISIP was expanded to include Canadian Forces personnel with service-related injuries and illnesses.
305. The Long-Term Disability benefits are reduced by amounts received under the *Canadian Forces Superannuation Act* (CFSA) and the *Canada Pension Plan* (CPP) and the total amount of the Long-Term Disability benefits was taxable under the *Income Tax Act*.
306. At first, the SISIP Long-Term Disability Plan was not mandatory. In 1982 the SISIP plan became compulsory for all Regular Force and Reserve Force Class C personnel.
307. In 1999 the SISIP plan was altered to provide an entitlement of up to two years of benefits should Canadian Forces personnel become unable to perform their “own occupation as a soldier” and were medically released due to injuries or illnesses whether service-related or non-service-related.
308. The share of the premiums between the Treasury Board and Canadian Forces personnel for the Long-Term Disability aspect of the SISIP plan has evolved over the years of the program as follows:
 - (a) Initially the Long-Term Disability premiums were shared 50/50 between the Canadian Forces member and the Treasury Board.
 - (b) On July 1, 1990, the Treasury Board Secretariat increased their share to 2/3 of the LTD premium and the member share was reduced to 1/3.

- (c) On September 1, 1990, the Treasury Board share was increased to 3/4 and the members' share reduced to 1/4.
 - (d) On April 1, 1993, the cost sharing arrangement for the Long-term Disability coverage was changed to 85 percent Treasury Board and 15 percent Regular Force personnel and 100% of premiums for Primary Reserve on Class A or B service or Reserve Force personnel on Class C service.
 - (e) As of April 1, 2009, the Treasury Board assumed responsibility to pay 100% of the premiums for service-related injuries and illnesses for Regular Force personnel, with Regular Force personnel continuing to pay 15% of premiums, but only for non-service-related injuries and illnesses, with the Treasury Board paying the remaining 85%.
 - (f) For Primary Reserve members on Class A or B service or Reserve Force personnel on Class C service, the Treasury Board continues to pay 100% of premiums for both service-related and non-service-related injuries and illness.
309. SISIP offers three types of optional term life insurance plans in increments of \$10,000 to a maximum of \$600,000 for Canadian Forces members and their families:
- (a) optional Group Term Insurance (serving members - *Regular force*);
 - (b) Reserve Term Insurance Plan (serving members - *Reserve force*); and
 - (c) insurance for Released Members (*released* members).
310. The premiums for the SISIP optional term life insurance plans are 100% payable by the Canadian Forces member.
311. The SISIP Long-term Disability plan is a replacement income protection plan for Canadian Forces personnel whether they are released for medical reasons or depart voluntarily.
312. SISIP is the first payer on the Long-term Disability coverage under which members are guaranteed, overall, a benefit of 75% (increased from 60% in 1975) of their military pay at the time of their release from the Canadian Forces if the member is not medically fit to serve.
313. Article 24 of the SISIP Policy 901102 provides that the monthly benefit payable is reduced by:
- (a) the monthly income benefits payable to the member under the *Canadian Forces Superannuation Act*;
 - (b) the Primary monthly income benefits payable to the member under the Canada or Quebec Pension Plans;
 - (c) the employment income of the member unless the member is participating in a rehabilitation program approved by the Insurer; and

- (d) the total monthly income benefits payable to the member under the *Pension Act* (including dependant benefits and retroactive payments covering the period during which such benefits were prefunded).
- 314. By a decision of the Federal Court of Canada in *Manuge v. Canada*, 2012 FC 499 (Docket: T-463-07) the Court ordered that the offset of *Pension Act* disability benefits from the SISIP Long-Term Disability income payable to the Plaintiffs and to the other members of the Class of approximately 4,500 former members of the Canadian Forces is in breach of Article 24(a)(iv) of the SISIP policy.
- 315. The Class in the *Manuge v. Canada* action is defined as follows:
 - All former members of the Canadian Forces whose long-term disability benefits under the SISIP policy number 901102 were reduced by the amount of their VAC disability benefits received pursuant to the *Pension Act* from April 17, 1985 to date
- 316. The Class does not include members of the Canadian Forces who receive a one-time lump sum award under the New Veterans Charter enacted in 2006, which is not deductible from the SISIP benefit.
- 317. On May 29, 2012, the Government of Canada announced that it would not appeal the Federal Court Decision in *Manuge v. Canada*.

O. The New Veterans Charter

- 318. The Canadian Forces has said that it has set a long-term strategic imperative to:
 - (a) nurture pride in the institution by meeting the highest of public standards in terms of ethos, values and professionalism, and by providing its members and employees with a compelling vision, a competitive quality of life and rewarding careers; and
 - (b) to improve resource stewardship by striking a careful balance between the investments needed to maintain current operations and the investments in people, infrastructure and equipment needed to prepare for emerging risks and future challenges.
- 319. In 2005, all federal parties and the Canadian Parliament supported enactment of the New Veterans Charter because of the representations by the government and its officials to Parliament and the Canadian public that through the New Veterans Charter improvements would be implemented to ensure that Veterans and their families would receive the support they need when they need it most.
- 320. The New Veterans Charter was the most significant change in how veterans were to be compensated for their injuries in more than 90 years but the bill received less than one minute of discussion in the House of Commons for second and third readings.
- 321. A Senate committee hearing was conducted after concerns were expressed about the legislation. At the hearing, government officials told the committee that:

- (a) the legislation was the result of “widespread,” “broad” and “extensive” consultations; and
 - (b) the “consultations on the New Veterans Charter have been the most comprehensive in VAC history”.
322. These statements were false.
323. The New Veterans Charter established a lump sum payout program for Canadian Forces members, RCMP members and certain others in lieu of disability pensions as previously provided for by the *Pension Act*.
324. The New Veterans Charter in 2006 had a liability cap of \$250,000.00 for a severe disability, subsequently increased to its current amount of \$293,308.00 with indexing which cap applied irrespective of how many separate injuries were suffered by the Canadian Forces member or veteran.
325. The New Veterans Charter provides that Canadian Forces members receive lump sum payouts that are pro-rated, based on a disability assessment ranging from 5% to 100%.
326. The premise of the New Veterans Charter is that these lump sum payouts are to be invested by the Canadian Forces members and the derived income is supposed to support Canadian Forces members and their families for the rest of their natural lives.
327. When the New Veterans Charter was enacted in 2005, it was stated to be an evolving charter with a commitment to review the efficacy of lump sum awards compared to the disability pension within two years.
328. In reality there were no significant changes made for over five years during which time battlefield casualties in the Afghan War increased markedly in number and severity.
329. Changes to the New Veterans Charter occurred with the passage of Bill C-55, the *Enhanced New Veterans Charter Act* (An Act to Amend the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* and the *Pension Act*) which received Royal Assent on the 24th day of March, 2011.
330. The amended New Veterans Charter:
- (a) made changes involving income allocation so that a veteran participating in a Veterans Affairs Canada rehabilitation program will receive an allowance equivalent to 75% of salary increased by C-55 to a minimum of at least \$40,000 annually;
 - (b) changed the permanent monthly allowance payable to returning veterans who are seriously injured and unable to return to work due to the severity of their injuries so that they will receive a minimum of \$58,000 per year until the age of 65; and
-

- (c) changed the lump sum payment so that Canadian Forces Members and Veterans could either take a one-time payment or spread it over how many years they choose.
331. Canadian courts have awarded and continue to award lump sum damages for heads of damage for analogous personal injuries and resulting disabilities in tort cases including general damages, specific damages, past wage loss, future earning loss, future care, and fund management fees but the awards under the New Veterans Charter are substantially less than lump sum awards of damages for similar injuries determined in judicial proceedings and do not take all of these factors into account.
332. Canadian courts award damages for pain and suffering at a maximum award level in Canada, which is currently approximately \$342,500, for each occurrence giving rise to a tort claim rather than the cap on compensation for all injuries under the New Veterans Charter.
333. The New Veterans Charter limits financial counselling for soldiers to a maximum of \$500, which pales in comparison to current judicial awards of Canadian courts for management fees.
334. Disabled members of the Class are left to derive an annual income from the investment of their lump sum payout despite their own reduced ability to work and earn income. The Plaintiffs say that their one-time payouts are, in addition to the awards being less than those awarded by the courts, disproportionately small because the method of settlement does not factor future wage losses, loss of capacity, or future cost of care.
335. Members of the Class who are severely disabled and who receive a lump sum payout and long-term Earning Loss benefits under the New Veterans Charter can be financially disadvantaged by approximately 30% compared with the previous *Pension Act* benefits, including but not limited to New Veterans Charter claw back provisions and New Veterans Charter benefit reductions at age 65.
336. Members of the Class who are moderately disabled who receive a lump sum payout and short-term Earning Loss benefits under the New Veterans Charter can be financially disadvantaged by up to 65% compared with the previous *Pension Act* benefits, due to gaps in the New Veterans Charter settlement process.
337. Members of the Class who are partially disabled Reserve Force members who are not medically released and who receive only a lump sum payout can be financially disadvantaged by up to 90% of what other workers' compensation programs and the courts would award due to the New Veterans Charter not including future earnings losses in the calculation of any settlement and because of arbitrary and artificial assessments under the Table of Disabilities and instructions.
338. The loss is greater for Reserve Force members who take a leave from civilian employment that pays a higher remuneration than the member's Canadian Forces salary or whose civilian employment future earnings expectations are not recognized in the New Veterans Charter settlement processes.

339. Since the enactment of the New Veterans Charter, members of the Class have been terminated in their employment and forced out of their income source as members in the Canadian Forces, have been unable to find meaningful employment, and have been provided with a total financial compensation package the New Veterans Charter that is insufficient to maintain a normal lifestyle for those of similar employment background in Canadian society.
340. Members of the Class who are Reserve Force members who were recently injured on Class C contracts in Afghanistan are not adequately compensated for their life-time reduction in earning capacity because:
- (a) disabled Reserve Force members generally do not have a traditional income source after being released back to Class A status;
 - (b) their ability to earn a life-long income is greatly affected by their physical and mental health conditions incurred during service;
 - (c) they are in a position where they have to apply for new employment where their disabilities can be an impediment to obtaining employment; and
 - (d) they receive no compensation for their loss of future earnings of what they would have earned as able-bodied workers, whether it is a total income loss or a partial income loss.
341. Some Canadian Forces members who are classified as totally disabled receive a one time payment of a Supplementary Retirement Benefit at age 65 years of 2% of their gross Earning Loss Benefit. However, members lose their monthly Earning Loss Benefits at age 65. Earning Loss Benefits are replaced by payments under the Canadian Forces Income Support plan of \$1,277.70 per month as a single veteran and \$1,943.50 per month as a veteran with a spouse/partner. These benefits are subject to a claw back of any other income received, which can leave recipients with incomes below the poverty line.
342. The New Veterans Charter, except in the most severe disability cases, provides members of the Class with a “loss of limb” disability assessment scheme based upon the arbitrary and artificial Table of Disabilities and instructions. The scheme provides a two-year retraining allowance program as opposed to a workers’ compensation program which addresses the injury resulting loss of the workers’ actual lifetime earnings.
343. The New Veterans Charter uses many terms found in workers’ compensation programs but does not provide members of the Class with analogous benefits to those of workers covered by workers’ compensation programs:
- (a) “Minimum Earnings Guarantee” sounds like a life-long earning compensation program. However, the Minimum Earnings Guarantee is actually a training allowance that certain Canadian Forces members are allowed to participate in for a defined period under an approved rehabilitation program, normally for 2 to 4 years.

- (b) With the exception of the most severely disabled, when the rehabilitation program is completed, the Minimum Earnings Guarantee program ends, notwithstanding the fact that the disabled Canadian Forces member may remain unemployed and precluded from employment by service-related disabilities forever.
 - (c) The Minimum Earnings Guarantee program is taxable and is subject to claw back of all other income of the disabled member, including other insurance payouts purchased by the member prior to their disability.
344. A severely disabled worker under current provincial workers' compensation programs would be compensated with approximately \$2.0 million dollars in tax-free income benefits from their twenties to age 65. Members of the Class with the same disabilities receive substantially reduced benefits under the New Veterans Charter.
345. The New Veterans Charter adopts the concept of divisibility to sever responsibility for injuries aggravated in service. This approach is incompatible with current personal injury law and precedent. Injuries suffered by Class members do not readily lend themselves to apportionment. The worsening of a single injury cannot be divided up.
346. The Plaintiffs and members of the Class are subjected to stringent medical examinations and fitness testing when they join the Canadian Forces. Yet they are required to establish to the officials tasked with making the determination of their disability under the New Veterans Charter that the member's original medical condition is not responsible for portions of the injury for which no compensation is payable. The Plaintiffs say that the result is that decisions are made with a high degree of arbitrariness with the result that "in service" injuries are not included in compensation awards.
347. The Plaintiffs say that members of the Class who have suffered PTSD as a result of their service, some to such extent that the soldier is bed-ridden and suicidal, have arbitrarily had inappropriately low initial assessments of disability (usually at 10%) and there appears to be the hope that the condition will improve and with instructions to follow up in a year for possible re-assessment under section 48 of the New Veterans Charter. The result is that already seriously stressed members are subjected to further stress by continuing the process for extended periods of time.
348. Section 54(1) of the New Veterans Charter purports to limit the total compensation of members of the Class to 100% of the maximum award regardless of the proven total disabilities of the soldier. This section disadvantages our most disabled Class members by arbitrarily deeming service incurred injuries not to exist.
349. This arbitrary assessment of disabilities is a result of artificially capping the financial recovery of a catastrophically injured soldier at approximately \$293,308.00. Courts regularly award millions of dollars in damages for similar injuries to reflect, in addition to pain and suffering, other losses such as loss of capacity.
350. There are many provisions in the New Veterans Charter that provide for ministerial discretion by the use of the word "may". However, to give effect to Canada's Social Covenant to those who serve in the Canadian Forces the imperative "shall" should be used.

351. To the extent that ministerial discretion is validly granted to the Minister, the Plaintiffs plead that because of the unique power that the Minister and Defendant exercises with respect to the Class members, and the peculiar vulnerability of the Class members, the Defendants owe a duty to the Class to avoid conflicts of interest and to act in the best interests of the Class and plead that each of the Class members stands in a relationship of trust and confidence with the Minister and the Defendant.
352. The Defendant at all times knew, or ought to have known, that the Class members were relying upon them to care for them, to protect their right and entitlement to the services and benefits required by Canada's covenant to those who serve in the Canadian Forces and the Honour of the Crown, and to act in their best interests.
353. By virtue of this relationship of trust and confidence, the Defendant owes a fiduciary duty to the Class members.
354. The Plaintiffs plead that as a result of the arbitrary assessment processes and compensation assessment decisions of the Defendant made contrary to the principles of fundamental justice and without regard to the basic tenets of our legal system, the Plaintiffs and the Class members have suffered real or imminent deprivations of life and security of the person which have adversely affected:
- (a) their physical and psychological integrity;
 - (b) their individual human dignity; and
 - (c) their personal autonomy and independence,

resulting in serious state-imposed psychological stress and a worsening of their medical conditions and qualities that constitute the normal life of a citizen of Canada.

P. Table of Disabilities

355. Subsection 35(2) of the *Pension Act* and subsection 51(1) of the New Veterans Charter provide that:
- The assessment of the extent of a disability shall be based on the instructions and a Table of Disabilities to be made by the Minister for the guidance of persons making those assessments.
356. The Disability Award as calculated based on the Table of Disabilities, compensates for the non-economic impacts of a service related disability.
357. The Table of Disabilities and instructions utilized by the Department and the Veterans Review and Appeal Board to assess the disabilities of the Plaintiffs and Class members purport to be issued under the authority of the Minister of Veterans Affairs Canada.
358. The Table of Disabilities and instructions is a statutory instrument and regulation as defined by the *Statutory Instruments Act* R.S.C., 1985, c. S-22 but, by virtue of section 35(2.01) of the *Pension Act*, are exempt from the application of sections 3, 5 and 11 of the *Statutory Instruments Act*.

359. The Table of Disabilities and instructions have not been forwarded to or registered by the Clerk of the Privy Council or published in the *Canada Gazette* thereby avoiding the scrutiny and review of the statutory instrument and regulation by the Clerk of the Privy Council in consultation with the Deputy Minister of Justice to ensure that:
- (a) it is authorized by the statute pursuant to which it is to be made;
 - (b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;
 - (c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*; and
 - (d) the form and draftsmanship of the proposed regulation are in accordance with established standards.
360. The Table of Disabilities and instructions have not been referred to a Committee of the House of Commons, of the Senate or of both Houses of Parliament established for the purpose of reviewing and scrutinizing statutory instruments as required by section 19 of the *Statutory Instruments Act*.
361. The Plaintiffs plead that the Table of Disabilities and instructions were not enacted as required by the statute pursuant to which it is to be made and are invalid as an *ultra vires* delegation of authority.
362. The Plaintiffs plead that the Table of Disabilities and instructions are invalid in that they constitute an unusual or unexpected use of the authority pursuant to which it is to be made.
363. The Plaintiffs plead that the Table of Disabilities and instructions are invalid in that they trespass on existing rights and freedoms and are inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982 (U.K.) 1982*, c. 11 [*Charter*] and the *Canadian Bill of Rights*, S.C. 1960, c.44.
364. The Table of Disabilities does not assess an injury and disability in accordance with the long established legal principles a Canadian court of law utilizes in assessing damages for personal injury but rather provides that the amount of benefits payable is to be expressed in percentage.
365. The Table of Disabilities provides that disability benefits are payable at a maximum of 100% in accordance with Schedule I of the *Pension Act* or Schedule 3 of the New Veterans Charter.
366. Although the Disability Assessment may exceed 100%, for payment purposes, disability benefits are payable at a maximum of 100% in accordance with Schedule I of the *Pension Act* or Schedule 3 of the New Veterans Act.

367. Under Schedule I of the *Pension Act* or Schedule 3 of the New Veterans Charter, the maximum assessment of 98% – 100% assessed disability, capped disability benefits payable originally at \$250,000.00. The capped amount has been subsequently increased to its current level of \$293,308.00.
368. The Plaintiffs say that capped disability benefits payable are set arbitrarily and are inappropriately low. By comparison British service members receive almost \$1 million for analogous injuries. In addition, the cap for damages for pain and suffering in a civil court case set by the Supreme Court of Canada is, adjusted for inflation, currently \$342,500 per civil claim.
369. The Plaintiffs plead that by utilizing the Table of Disabilities and instructions as the methodology of assessing the disability of Class members, VAC failed to properly assess the disabilities of individual Class members with reference to the real world implications of the individual members' disabilities.
370. The Plaintiffs plead that the occurrences of death, injury, damage or loss identical to those suffered by Class members are issues that have been determined by the courts of Canada throughout the history of the country in assessing damages for tort claims pursuant to established legal principles without the guidance of the arbitrary and artificial limitations of the Table of Disabilities and instructions.

Q. Infringement of Property Rights

371. The Plaintiffs and the Class plead that they have been unlawfully deprived of their causes of action arising from the injuries they have suffered.
372. The Plaintiffs and the Class further plead that property rights at law have traditionally been recognized as a fundamental freedom and that there is a right of the individual to the enjoyment of property and the right not to be deprived thereof, or of any interest therein, save by due process of law.
373. The Plaintiffs and the Class plead that Canada is a party to the *United Nations Universal Declaration of Human Rights*, Article 17 of which reads:
1. Everyone has the right to own property alone as well as in association with others.
 2. No one shall be arbitrarily deprived of his property.
374. The Plaintiffs and Class also rely upon The *Canadian Bill of Rights*, which affirms the right of the individual to the enjoyment of property and the right not to be deprived thereof except by due process of law and Section 26 of the *Charter* which stipulates that “The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights and freedoms that exist in Canada.”

R. Accommodation of the Plaintiffs by the Defendant

375. The *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, requires employers to accommodate the needs of disabled individuals, subject to *bona fide* occupational requirements.
376. The Defendant relies on section 15(9) of the *Canadian Human Rights Act* which, by application of the principle of universality of service, exempts the Canadian Forces from the duty to accommodate. Consequently, members of the Class can be medically released instead of being accommodated.
377. The Plaintiffs plead that the principle of universality of services does not abrogate the Government of Canada's duty to accommodate the specific needs of disabled members of the Class.

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

378. Within five years of its enactment, a number of reports examined the effectiveness of the New Veterans Charter. The reports noted a number of gaps and provided recommendations.
379. The first comprehensive examination of the New Veterans Charter came from the New Veterans Charter Advisory Group, established by VAC in June 2009 for the express purpose of evaluating the New Veterans Charter. Their report, *The "Living" Charter in Action: Honouring Our Commitment to Veterans and Families*, provided 299 recommendations for the New Veterans Charter, some relating to large "framework" suggestions, others giving specific recommendations.
380. Specifically, the New Veterans Charter Advisory Group recommended increasing the amount of the lump-sum payment awarded to disabled veterans in order to reflect the amount paid in personal injury claims in civil society.
381. In June 2010, the House of Commons Standing Committee on Veterans Affairs released a report entitled *A Timely Tune-up for the Living New Veterans Charter*, stating that the recommendations from the Advisory Group report should be implemented and making additional recommendations.
382. With respect to the lump-sum payment, the House of Commons Standing Committee stated that the amount should be reflective of the veteran's disability, age, and circumstance, and concluded that veterans were not able to manage their lump-sum payments in a way that provided them with the support they required.
383. VAC began its own three-phase review of the New Veterans Charter in April 2009, publishing Phase 1 in December 2009, Phase 2 in August 2010 and Phase 3 in February 2011.
384. The Special Needs Advisory Group to VAC focuses on the needs of veterans with severe disabilities. The Advisory Group has written a number of reports which have not been made not been made publicly available by the Defendant.

385. The Defendant’s typical response to problems noted or recommendations made in these reports has been that “any proposal for legislative or regulatory change(s) that the Department might develop for Government consideration would need to be costed (on a cash and accrual basis) and considered in light of other priorities”.
386. The Plaintiffs say that this approach is inconsistent with Canada’s covenant to those who serve in the Canadian Forces and the Honour of the Crown. Class members’ entitlement to the services and benefits required by Canada’s covenant must not be subject to precedence being given to other priorities in the minds of officials.

PART 2: RELIEF SOUGHT

387. The Plaintiffs on their own behalf and on behalf of and representing all other Class members, claim for the following relief:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiffs Scott, Campbell, Flett, Berry, Quast and Bedard as representative plaintiffs under the *Class Proceedings Act*;
- (b) a declaration that pursuant to the constitutional principle of the Honour of the Crown, public law duties to recognize and give effect to the Social Covenant of Canada to those who serve in the Canadian Forces are, and at all material times were, owed to the Plaintiffs and the Class;
- (c) a declaration that the Defendant has breached the public law duties owed to the Plaintiffs and the Class;
- (d) a declaration that the Table of Disabilities is of no force and effect; following provisions of the New Veterans Charter are inconsistent with Canada’s Constitution and are of no force and effect:
 - (i) Sections 18(3)(c) and 18(4)(b);
 - (ii) Section 19(1);
 - (iii) Section 22(3);
 - (iv) Sections 23(1) and 23(3);
 - (v) Section 35(2);
 - (vi) Section 37(1);
 - (vii) Section 38(2);
 - (viii) Sections 52(1) and 52(3);
 - (ix) Sections 54(1) and 54(2);
 - (x) Sections 58(1) and 58(2); and

- (xi) Schedules 1, 2, and 3 of the New Veterans Charter;
- (e) a declaration that the Table of Disabilities made by the Minister of Veterans Affairs under section 51(1) of the New Veterans Charter, and under section 35(2) of the Pension Act, R.S.C., 1985, c.P-6 is inconsistent with the Constitution Act, 1982, and is of no force and effect;
- (e)(f) a declaration pursuant to section 52 of the Constitution Act, 1982 that the Plaintiffs and the Class have been discriminated against contrary to section 15 of the Charter;
- (f)(g) all necessary orders pursuant to section 24(1) of the Constitution Act, 1982 or otherwise under common law or equitable principles required to remedy the breaches of section 15 of the Charter affecting the Plaintiffs and members of the Class;
- (e)(h) a declaration pursuant to section 52 of the Constitution Act, 1982, that the Plaintiffs and the Class have suffered real or imminent deprivations of life, liberty and security of the person contrary to section 7 of the Charter;
- (h)(i) all necessary orders pursuant to section 24(1) of the Constitution Act, 1982 or otherwise under common law or equitable principles required to remedy the breaches of section 7 of the Charter affecting the Plaintiffs and members of the Class;
- (i)(j) a declaration that the Defendant has breached the fiduciary duties owed to the Plaintiffs and the Class as former servants and members of the Canadian Forces terminated as a result of injuries sustained during the course of their service and suffering resulting disabilities;
- (j)(k) an order pursuant to section 24(1) of the Constitution Act, 1982 or otherwise under common law or equitable principles, that the Plaintiffs and the Class members be paid the difference between the amount paid under the New Veterans Charter and the amounts that would have been paid for analogous injuries in awards by the courts in Canada or in the alternative, under workers' compensation schemes;
- (k)(l) a declaration that the Plaintiffs and members of the Class have been unlawfully deprived of their property rights without due process of law contrary to the United Nations Universal Declaration of Human Rights, the Canadian Bill of Rights, S.C. 1960, c. 44 and section 26 of the Charter and the Plaintiffs seek all necessary orders pursuant to the Canadian Bill of Rights, S.C. 1960, c. 44;
- (l)(m) general damages;
- (m)(n) special and aggravated damages;
- (m)(o) costs pursuant to section 37 of the Class Proceedings Act R.S.B.C. 1996, c. 50;

(e)(p) interest pursuant to the *Court Order Interest Act*, R.S.B.C., c.79; and

(p)(q) such further and other relief as to this Honourable Court may seem just.;

PART 3: LEGAL BASIS

T. Claim in Breach of Fiduciary Duty

388. A common law fiduciary duty of care is owed by Canada, the Defendant, to the Plaintiffs and to the Class consistent with Canada's covenant with Service Members and Veterans and with the Honour of the Crown, as plead in paragraphs 218-286 herein.

389. The support and compensation scheme(s) established by the Defendant for the Plaintiffs, their families and for the Class under the provisions of the New Veterans Charter, as plead in paragraphs 318-370 herein, are arbitrary, sub-standard and inadequate, and are in breach of Canada's Covenant with Service Members and Veterans and with the Honour of the Crown, and are in breach of the Defendant's fiduciary duty owed to the Plaintiffs and to the Class.

U. Claims of Unconstitutionality

390. Further, 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 the right to life, liberty and security of the person in a manner that is inconsistent with the principles of fundamental justice.

391. Further, and in the alternative, 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.

V. Statutes Relied On

~~388-392.~~ The Plaintiffs bring this action relying upon the *Class Proceedings Act* R.S.B.C. 1996, c. 50; the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11 (the "Charter"); the *Pension Act*, R.S.C. 1985, c. P-6, as amended; *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c 21; the *Enhanced New Veterans Charter Act*, S.C. 2011, c. 12; the *War Veterans Allowance Act*, R.S.C., 1985, c. W-3; the *Veterans Review and Appeal Board Act*, S.C. 1995, c. 18; the *Statutory Instruments Act* R.S.C., 1985, c. S-22; *Canadian Human Rights Act*, R.S.C. 1985, c. H-6; *Canadian Bill of Rights*, S.C. 1960, c. 44.

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Place of trial:

Vancouver, British Columbia

The address of the Registry is:

Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

Date: 30 October 2012
Amended 28 November 2012



Signature of Lawyer for the Plaintiffs
Donald J. Sorochan, Q.C.

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.

APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Put an "x" in one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

PART 3: THIS CLAIM INVOLVES:

[Put an "x" in all boxes below that apply to this case.]

- a class action
- maritime law
- Aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

PART 4:

Negligence Act, R.S.B.C. 1996, c. 333 and the *Law and Equity Act*, R.S.B.C. 1996, c. 253.