

ABEYANCE AGREEMENT

This Abeyance Agreement is dated this 27 day of May, 2015

BETWEEN

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

(the "Plaintiffs")

AND

THE GOVERNMENT OF CANADA

(the "Defendant")

(collectively, the "Parties")

RECITALS

- A. **Whereas**, on October 30, 2012, Daniel Christopher Scott; Mark Douglas Campbell; Gavin Michael David Flett; Kevin Albert Matthew Berry; Bradley Darren Quast; and Aaron Michael Bedard, suing on their own behalf and as potential representative plaintiffs on behalf of members of a proposed class of individuals with common issues pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c. 50, commenced **British Columbia Supreme Court Action No. S-127611** in the Vancouver Registry against the Government of Canada;
- B. **And whereas**, B.C. Supreme Court Action No. S-127611 has not yet been certified as a class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c. 50;
- C. **And whereas**, on May 31, 2013, the Defendant brought an application to strike the claim brought by the Plaintiffs in B.C. Supreme Court Action No. S-127611, which application was unsuccessful pursuant to the reasons for judgment of Mr. Justice Weatherill pronounced September 6, 2013 in *Scott v Canada*, 2013 BCSC 1651;
- D. **And whereas**, on October 6, 2013, the Defendant filed a Notice of Appeal in **Court of Appeal File No: CA041232**, which appeal was heard December 3 and 4, 2014, following which hearing the Court of Appeal reserved judgment and requested the Parties to provide further submissions on specified dates with respect to issues raised by the Court;
- E. **And whereas**, the Parties mutually agreed that discussions to explore a possible resolution of the issues in the litigation would be useful and jointly requested the Court of Appeal to extend the time limits for the further submissions requested by the Court of Appeal;
- F. **And whereas**, the Court of Appeal agreed to the joint submissions of the Parties and extended the time limits for the further submissions by placing the appeal litigation in abeyance "until April 15, 2015, or until further advised by the parties", and whereas the

Parties requested a further extension to May 15, 2015 and the Court granted same until June 1, 2015;

- G. **And whereas**, the Parties mutually agree that Veterans are best served by immediate, constructive and cooperative efforts to address Veterans' wellbeing in a manner that focuses on care, compassion and respect, rather than through lengthy litigation, which, by its nature, is imperfect, expensive, and stressful to the participants;
- H. **And whereas**, the Parties have entered into negotiations with a view to resolving the issues in the litigation on the basis of the Government of Canada's current and intended reforms to benefits and improved processes and policies relating to the application for benefits for Canadian Veterans (**the "Negotiations"**), the provision of which may require bringing into force legislative and regulatory enactments and changes in policies and procedures (**the "Reforms"**),
- I. **And whereas**, at the time of execution of this Agreement, two of the Reforms have already come into effect by regulatory enactment, and Bill C-58, containing Reforms announced to date and requiring legislative enactment, has been tabled by the Government in the House of Commons, and has also been included verbatim in the *Budget Implementation Act*, which legislation contains a purpose clause, that:
- 2.1 The purpose of this Act is to recognize and fulfil the obligation of the people and Government of Canada to show just and due appreciation to members and veterans for their service to Canada. This obligation includes providing services, assistance and compensation to members and veterans who have been injured or have died as a result of military service and extends to their spouses or common-law partners or survivors and orphans. This Act shall be liberally interpreted so that the recognized obligation may be fulfilled.
- J. **And whereas**, on the 12th of May 2015 a motion was passed by the unanimous vote of all Members of Parliament present (266 in favour none against), including all members present of the governing party:
- That, in the opinion of the House, a standalone covenant of moral, social, legal, and fiduciary obligation exists between the Canadian people and the government to provide equitable financial compensation and support services to past and active members of the Canadian Armed Forces who have been injured, disabled or have died as a result of military service, and to their dependants, which the government is obligated to fulfil;
- K. **And whereas**, the Plaintiffs are appreciative of and encouraged by the actions referred to in paragraphs H, I and J and the Parties intend to continue their Negotiations and to maintain an ongoing dialogue regarding the effectiveness of any Reforms made by the Defendant or further reforms that may be identified by the Parties;
- L. **And whereas**, the Parties agree to resolve the appeal in Court of Appeal File No: CA041232 by abandonment by the Defendant/Respondent of the appeal by consent of the Plaintiffs/Respondents on a without costs basis and to hold the all legal proceedings in the Supreme Court of British Columbia action in continued abeyance from the date this Agreement comes into effect until May 15, 2016 (**the "Abeyance Period"**)
- M. **And whereas** before finalizing a settlement the Plaintiffs wish to consider the efficacy and impact of the Reforms made by the Defendant in the provision of benefits to Veterans and their families, whether coming as a result of the Negotiations or otherwise;

- N. **And whereas** in furtherance of this Agreement, and to facilitate the Reforms, the Parties intend for one or more of the Plaintiffs to assume the role of liaisons between the Parties and the Veterans community regarding the Reforms and the implementation of those Reforms by the Defendant (the "**Liaisons**"), including through participation in stakeholder advisory groups set up by the Minister of Veterans Affairs in respect of the Reforms and their implementation;
- O. **And whereas** the Parties agree that the Plaintiffs, the Liaisons, and their counsel will work cooperatively with the Government of Canada and provide input with respect to the Negotiations and Reforms, it being agreed that working together and prior consultation towards solutions best advances the common cause of serving Veterans and ensuring that Reforms are fully understood so that Veterans can use them to the best advantage of themselves and their families;
- P. **And whereas**, while the Negotiations and implementation of Reforms are ongoing, the Parties have agreed to hold in abeyance B.C. Supreme Court Action No. S-127611 and to advise the Court of this agreement.
- Q. **And whereas**, the Plaintiffs state to the Defendant that if the Reforms are implemented to the reasonable satisfaction of the Plaintiffs during the abeyance period of this Agreement, further litigation will be unnecessary and the Parties shall settle and resolve the Litigation by the Plaintiffs by discontinuing the aforementioned action without costs to any party;
- R. **And whereas**, the Government acknowledges the valuable contributions made by the Plaintiffs and their counsel, Miller Thomson LLP, to the continuing efforts to fulfill the recognized obligation that Canada owes to our Veterans and the Government and thanks the Plaintiffs and their counsel, Miller Thomson LLP, for these contributions, and commends Miller Thomson LLP for taking on this matter on a *pro bono* basis, which is in the best traditions of the legal profession;
- S. **And whereas**, the Plaintiffs acknowledge the Government's sincere, tangible, and continuing efforts to respond to the issues raised by Veterans groups general, and the Plaintiffs particularly;

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

Suspension of the Litigation

1. The Parties agree that, concurrently with the execution of this Agreement:
 - (a) The Defendant will, with the consent of the Plaintiffs/Respondents, abandon the appeal in Court of Appeal File No: CA041232 on a without costs basis or, if necessary, seek leave to abandon the appeal with the consent of the Plaintiffs without costs to any Party;
 - (b) Jointly cause all legal proceedings in the Supreme Court of British Columbia action to be held in continued abeyance from the date this Agreement comes into effect until May 15, 2016 (the "**Abeyance Period**") and in accordance with this Agreement.

2. No party shall take, or require another Party to take, any steps in the Litigation during the Abeyance Period, except as provided for in this Agreement or by written agreement of the Parties.
3. Each Party shall instruct their counsel to take all reasonable and necessary steps to suspend the Litigation as between the Parties while this Agreement remains in effect.
4. Notwithstanding the foregoing, nothing in this Agreement shall prevent or restrict a party from defending, responding to, or intervening in, other proceedings to protect the claims, rights or interests of the party from competing or adverse claims made in other proceedings.
5. The Plaintiffs and the Liaisons agree that, with respect to the deliberations and processes of the consultations and the stakeholder advisory groups, they will only engage with the media, other Veterans, and the general public for the purpose of obtaining information required for the consultations and, as permitted by the processes of the consultations, provide only general comment on the progress made and remaining to be made in respect of the Negotiations, the Reforms, their implementation and factual background.
6. The Parties acknowledge and agree that they have, and will continue to be, contacted by the Media and others for comment on the lawsuit and on Veteran's Issues generally. The Parties acknowledge and agree that while it may be necessary to respond to such requests, that the details of the lawsuit will remain confidential for both current and future Negotiations. Accordingly, the Parties agree that they shall endeavour to maintain the respectful and productive dialog that they have now entered into, keep success of the reforms in mind and ensure, to the extent possible, that any such communications are reported accurately and fully.
7. In the event the Parties do not settle the Litigation within the Abeyance Period, the Parties are at liberty to pursue litigation options as they see fit.

Duration of this Agreement

8. Unless previously terminated pursuant to section 9 below, this Agreement shall terminate on May 15, 2016.
9. Notwithstanding paragraph 8 above, either party may terminate this Agreement, upon two weeks written notice, in the event that one of the following occur:
 - (a) the Government does not obtain passage of the substance of Bill C-58 on or before August 15, 2015 (it being acknowledged that the Bill has been rolled into the Budget Implementation Act so as to make it a confidence vote and ensure passage, and therefore that passage of the Budget Implementation Act includes the passage of Bill C-58);
 - (b) the Government does not schedule the fall meetings of the Stakeholder Advisory Groups on or before August 15, 2015;
 - (c) the Stakeholder Advisory Groups are established and do not have two or more representatives from the Plaintiffs on them; and /or
 - (d) the Regulations implementing Bill C-27 (Priority Hiring) are not promulgated on or before August 15, 2015;

Settlement of Legal Proceedings

- 10. If, on May 15, 2016, or at any time during the Abeyance Period, the Plaintiffs are reasonably satisfied that the Reforms have achieved sufficient improvements, the Litigation shall be settled by the Plaintiffs discontinuing the action without costs to any party.

Time

- 11. The Parties agree that the period of time from the date of this Agreement until the date this Agreement terminates shall not count or be used against a Party for any purpose in or connected with or related to the Litigation.

Amendments

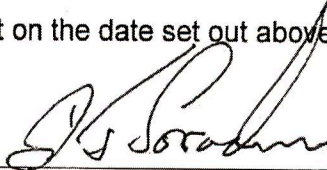
- 12. This Agreement contains the entire Agreement between the parties in regards to the suspension of the Litigation.
- 13. No amendment, waiver or variation of any of the terms and provisions of this Agreement is of any effect, unless made in writing and signed by each of the Parties or their authorized representatives.

Execution

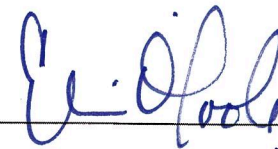
- 14. This Agreement may be entered into by each party or its Minister or his authorized representative signing and delivering to all other Parties, by e-mail or fax, a counterpart copy of the execution page of the Agreement signed by that party.
- 15. This Agreement comes into effect on the date of the last delivery

THE PARTIES hereby execute this Abeyance Agreement on the date set out above:

May 18, 2015


 Donald J. Sorochan, QC
 MILLER THOMSON LLP
 Solicitors for the Plaintiffs

May 27, 2015
Date


 Joel Watson
 Director of Legal Services to the Office of
 the Minister of Veterans Affairs