

\$37-million spent on veteran legal costs a 'broken promise': critics

Despite ongoing court action, Veterans Affairs Minister Seamus O'Regan says the government 'does not take veterans to court,' with most of the disclosed expenses going to support legal fees and a review board to support redress programs to keep vets out of the courts.

BY SAMANTHA WRIGHT ALLEN

The Liberals have spent at least \$37-million since January 2016 on legal proceedings with veterans in a move opposition MPs and the veterans they're fighting in court say represents a broken platform promise.

The vast majority—\$36.3-million—makes up two years' worth of budget for two programs: \$18.4-million for the Veterans Review and Appeal Board, a body for veterans to dispute benefit and pension problems, and \$17.9-million for the Bureau of Pension Advocates, which offers free legal advice for veterans to prepare for applications and in appeals.

When it comes to legal fees shelled out in the last two years, the federal government spent \$1.3-million for 73 cases involving veterans, with all but five under \$30,000. The most spent for one case was \$433,649 and the least was \$82, according to documents tabled March 28 in response to an Order Paper question submitted by Conservative MP Bev Shipley (Lambton-Kent—Middlesex, Ont.).

Conservative MP Phil McColeman (Brantford-Brant, Ont.), his party's veterans affairs critic, said he was surprised by the "very large number," while his NDP counterpart MP Gord Johns said the \$1.3-million means "73 promises were broken just by this report alone."

What was tabled in the House likely doesn't show the full picture, Mr. Johns (Courtenay-Alberni, B.C.) added.

"We only see this as the legal fees. This doesn't include the court cost, this doesn't include the staff at Veterans Affairs Canada and the whole bureaucracy. This is a lot of money and taxpayers should be concerned."

Each invoked Prime Minister Justin Trudeau's (Papineau, Que.) words repeated during the 2015 election campaign and the platform promise that "no veteran has to fight the government for the support and compensation they have earned."

"Any money spent by the Liberal government is money that



Veterans Affairs Minister Seamus O'Regan is defending the more than \$37-million shelled out by the Liberal government since 2016, of which more than \$1.3-million covers legal fees fighting court cases launched by veterans. *The Hill Times photograph by Andrew Meade*

they said they wouldn't spend," said Marc Burchell, president of the Equitas Society, made up of a group of disabled veterans squaring off in *Scott v. the Attorney General of Canada*. They are waiting to hear from the Supreme Court of Canada about their application to appeal a ruling by the B.C. Court of Appeal in December 2017 that stopped their case from going to trial.

Equitas is connected to one of the biggest bills on the list—\$236,331 over the last two years for a case launched more than six years ago after the Conservative government changed its approach to compensation for injured soldiers.

But Ottawa doesn't see it that way.

"Our government does not take veterans to court," said Veterans Affairs Minister Seamus O'Regan (St. John's South-Mount Pearl, N.L.), who was not available for an interview and emailed a statement.

"The Department of Justice Canada assesses and defends all cases based on the merits of the claim and conducts all litigation in a respectful manner as required by the rules of court," he said, and "regardless of on-going court actions," the government is strengthening supports for veterans, including \$10-billion in new money since 2016.

In February, Mr. Trudeau caused a backlash when he told a B.C. townhall the government is

fighting veterans groups "because they're asking for more than we are able to give right now." The Prime Minister's Office deferred comment requests to Mr. O'Regan.

Both Conservative and NDP critics said money could be saved and matters could be solved outside of courts, with Mr. McColeman suggesting an independent arms-length body that would render decisions that both sides would have to follow.

"We should put in some kind of arbitration process or something similar to that so that we never get to court with a veteran," said Mr. McColeman, adding he often hears from veterans who are "feeling that they are disrespected by the government."

Life pensions don't live up to promise: critics

In December 2017, the Liberals announced their "pension for life" plan in an attempt to address problems with the 2006 New Veterans Charter that meant veterans injured after that year got less financial support—the issue at the heart of the Equitas case.

Moving away from the current lump-sum payment approach won't come into effect until April 2019, and while Mr. Burchell said it's progress, it still creates a two-tiered system and "doesn't resemble" Mr. Trudeau's promise.

"It doesn't measure up at all," he said, adding payouts vary depending on the severity of injury,

and, in extreme cases, the new system offers more money but with many others, it's less. One plaintiff in the case estimates they get 40 per cent less than what would have qualified for under the previous system, he said.

"It should be consistent. What's good for one veteran should be good for all," he said. "Just because [you're] wounded after a policy change should not mean you're any less entitled to the same degree of benefits."

Veterans Affairs said it "delivered on its commitment" to address the lifelong pension in the documents tabled in the House.

The recent disclosure provides only a snapshot of total costs for some cases. The Equitas group's lawyer Don Sorochan said his firm has wracked up more than \$2-million in legal fees since 2012 and it would be hard to estimate the government's expense in that time frame. Both the Department of Justice and Veterans Affairs Canada said *The Hill Times* should submit an access to information request for total costs associated with the case.

Mr. Sorochan said the disclosure raises questions as he's not sure how the government spent money on the case when it has been mostly sitting in limbo since the B.C. Supreme Court ruled the veterans could go to trial in 2014 until the B.C. Court of Appeal ruled against them three years later.

Earlier this week, CBC reported that there's nearly \$1-million

more in legal fees spent on two cases not included in the disclosure, dealing with allegations of sexual assault and harassment from former military members. The federal government changed tack and instead of pursuing the cases in court, it's now looking to negotiate settlements in those cases, CBC also reported.

"The [true] cost really is a lack of faith and trust in the veteran community," said Mr. Burchell, adding veterans also talk about the court action creating a disincentive for people to enlist because the "trust is gone" with government's support for its troops.

Toth v. Her Majesty the Queen, a class action suit that represents up to 20,000 veterans fighting "discriminatory" approaches to disability benefits for veterans, has cost \$433,649. Lawyer Michel Drapeau said he couldn't comment on the case as it's still in the discovery process with the Department of Justice.

Mr. O'Regan said he couldn't comment on any case before the courts but recognizes "the right that all Canadians have to pursue legal recourse." With veterans, he said, Canada provides free legal help through the pensions advocates.

The Equitas case and the recent pension promise means veterans under the old and new systems will still see different support levels, Mr. Johns said, leaving some "shorted."

"Clearly there's a differential and it needs to be corrected and that's something the Liberals promised. And right now the government is following in the Conservative footsteps," he said, noting the Equitas case was launched under Conservative prime minister Stephen Harper.

"The Conservatives could have enshrined the sacred obligation into law when they were in power," said Mr. Johns, blaming the past practices and staff reductions for a "massive backlog" of disability claims.

Between September 2009 and September 2015 the department lost 23 per cent of its staff, or more than 950 positions, according to Treasury Board of Canada data.

There had been progress when then-Conservative veterans minister Erin O'Toole (Durham, Ont.) took the file, Mr. Sorochan said, and they thought the resolution would continue under the Liberals.

Mr. McColeman said he couldn't comment on any of the cases, but rejected any comparisons to the party's position while in government as "the typical line of thinking that the media uses that because something happened in the past it's politically relevant to the future to where we're heading."

The Conservatives did what they thought was the right thing at the time, he said, and "bears no relevance" to what the Liberal government is doing.

"We're not, certainly, in the future looking for the same policies or the same things going forward," he said, adding Conservative leader Andrew Scheer (Regina-Qu'Appelle, Sask.) will have a new policy platform.

"We need to do things differently so that we don't end up in court with our veterans."

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