

Federal Court



Cour fédérale

Date: 20140702

Docket: T-463-07

Citation: 2014 FC 640

Ottawa, Ontario, July 2, 2014

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

DENNIS MANUGE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

[1] This is a motion brought before the Court by the parties on consent under *Federal Courts Rules* 334.29 and 334.4. The parties also seek relief under Rule 334.19 to amend the Certification Order in this proceeding expanding the Class membership.

[2] The parties are seeking the Court's approval for a proposed settlement of an outstanding issue that was not resolved at the time of the Court's earlier settlement approval Order in *Manuge v Canada*, 2013 FC 341.

[3] Under the terms of the earlier Order the principal settlement terms were approved along with the fixing of legal fees and disbursements payable to Class counsel. Up to that point the parties had been unable to resolve a disagreement concerning the calculation of a cost of living provision (COLA) in the SSIP long term disability policy. They prudently put that matter aside for later discussion or adjudication and moved forward with the settlement of the other matters in issue.

[4] After considerable further negotiation the parties have provisionally resolved the COLA issue. They also propose three other administrative adjustments that will, if approved, benefit members of the Class. The proposed settlement of these matters will result in an estimated refund to Class members of \$38.6 million dollars including interest calculated to the date of payment.

[5] Another aspect of the proposed settlement involves an expansion of the Class to include approximately six thousand new members who had not been adversely affected by the LTD *Pension Act* offset that was the initial subject of this Class action. Because the COLA calculation affected many other Canadian Forces members who were not subject to the *Pension Act* offset, the parties propose to include them as Class beneficiaries to the COLA refund.

[6] The settlement proposal represents a payout to the expanded class of 74% of a best case maximum entitlement. The parties attribute the 26% reduction to the elimination of litigation risks. Unlike the earlier settlement, which had been motivated by my judgment favouring the Class, the COLA issue was not judicially determined. Having had the benefit of the parties written submissions on the COLA issue, I can attest to the fact that its resolution was not free of legal difficulties. There was risk to both parties had they required the Court to resolve the issue. In addition, the Defendant had what appeared to be a viable limitations defence that, if accepted, would have barred any recovery prior to March 2001. Under the terms of the proposed settlement the limitations defence has been dropped and benefits will be payable without temporal restriction.

[7] The parties have also proposed a simplified process for distributing refunds to Class members that includes a direct payment by the Defendant to Class counsel of \$19 for each refund transaction. This transfers some of the ongoing administrative expense to the Defendant.

[8] As with the earlier settlement, COLA refunds can be paid to spouses and children of deceased Canadian Forces veterans.

[9] In return for these benefits the Defendant seeks a comprehensive and final release of all potential claims in the following terms:

IN CONSIDERATION of the Defendant's agreement to the terms of this Order, each Class Member DOES HEREBY RELEASE and forever discharge the Defendant and her officers, directors, employees, agents, parent, subsidiaries, affiliates, predecessors, successors, and assigns, jointly and severally, from any and all losses, damages, debts, liabilities, costs, claims, suits, actions, causes of action, and demands whatsoever which the Class Member ever had, now has, or which the Class Member or his or her heirs,

executors, successors or assigns may at any time in the future have against the Defendant by reason of or resulting from the Offset of *Pension Act* benefits, the calculation of Cost of Living Allowance increases, the calculation of the offset for employment income earned as part of a rehabilitation program, or the determination of minimum salary, including all claims raised or capable of being raised in this action.

[10] The Affidavit of Daniel Wallace confirms that a Preliminary Notice of the proposed settlement was sent to Class members in early May 2014, and posted on the internet. Members of the Class were invited to make their views known and, in particular, they were given instructions on the process for objecting to the settlement terms or to the proposed legal fees payable to Class counsel. As of June 10, 2014, sixty-three Class members had responded. Of those, sixty supported the proposed settlement and one was opposed. Eighteen of the sixty-three respondents wrote in support of the proposed legal fees and two were opposed. At the time of the settlement approval hearing in Halifax on June 20, 2014 only Mr. Manuge made a submission and he did so in support of the proposed settlement and legal fees. The Defendant took no position concerning the amount sought by Class counsel for legal fees.

[11] It is apparent from the evidence that the proposed settlement has the support of virtually all of the members of the Class. That is not surprising because the settlement terms provide a generous recovery on behalf of 14,000 disabled Canadian Forces veterans or to their families arising from the recalculation of their COLA entitlement under the LTD policy.

[12] The objections raised by only one member of the Class to the terms of the settlement have no merit and should not, in any event, block the recovery of needed benefits that thousands of other beneficiaries are seeking. The proposed settlement is accordingly approved.

[13] Class counsel propose to deduct from refund cheques legal fees of 8%. An additional allowance of 0.038% is requested to be applied to out of pocket expenses incurred. With an average recovery of about \$2,500 this is a modest amount that is unlikely to cause disproportionate hardship to anyone. The amount sought is also consistent with the legal fees that were approved by the Court at the time of the initial settlement. Had the COLA issue been resolved at that time the additional benefits would have been subject to the 8% allowance for legal fees. Counsel will continue to administer these claims over the next 18 months and they have worked hard to achieve a very favourable outcome on behalf of Class members. The COLA issue was itself identified by counsel in the course of their review of the other matters in issue in this case. Without their efforts this additional recovery would not have occurred. Counsel should be rewarded for their initiative and diligence and an 8% recovery is, in the circumstances, very reasonable. It is accordingly approved.

[14] Finally, like Mr. Manuge, I would commend counsel for the Minister for their hard work in reasonably resolving this issue in favour of disabled veterans and their families. It is also to the credit of the Minister that a highly litigious approach to this matter was avoided and, in the result, a reasonable compromise was obtained.

[15] There are no costs of this motion.

ORDER

THIS COURT ORDERS that:

[1] The Defendant's agreement to the following terms of this Order is made without admission of liability in regard to any claim made by the Plaintiff Class.

[2] For the purposes of the further remedies provided in this Order only, the definition of the Class shall be amended to the following:

All former members of the Canadian Forces who were in receipt of long-term disability benefits under S.I.S.I.P. Policy No. 901102 on or before the date of this Order and whose benefits were subject to a Cost of Living Allowance increase from January 1, 1971 to the date of this Order.

[3] The opt out date for any new Class Members added by virtue of this amendment shall be 60 days from the date that the Defendant, through Manulife Financial, distributes the appropriate Notice to the last known address on file for the Class Members ("Opt Out Period"). An Opt Out may be withdrawn before the end of the Opt Out Period.

[4] The following common issues shall be added:

Did the Defendant properly calculate the Cost of Living Allowance increases under S.I.S.I.P Policy 901102 from January 1, 1971 to the date of this Order?

Did the Defendant properly calculate the offset for employment income earned as part of a rehabilitation program?

Did the Defendant properly set the Class Members' minimum salary for the purposes of calculating LTD benefits?

[5] The Statement of Claim shall be amended as set out in Annex A to this Order.

[6] The Defendant shall calculate for each member of the Class an amount known as the “Principal Refund” to be calculated according to the following formula:

74% multiplied by $(y + z)$

Where:

y = the difference for the Class Member from December 1, 1999 to the date of this Order between:

- (i) the application of the Cost of Living Allowance from the date the benefit commenced on the gross long term disability benefit; and
- (ii) the application of the Cost of Living Allowance from the date the benefit commenced on the net long term disability benefit.

y only pertains to Class Members released on or after December 1, 1999;

z = the difference for the Class Member from January 1, 1971 to the date of this Order between:

- (i) applying the cumulative increase in the Cost of Living Allowance (capped at a maximum increase in benefits of 2% per year) from the date the benefit commenced on the gross or net¹ long term disability benefit; and
- (ii) applying the increase in the Cost of Living Allowance only in the most recent year (capped at a maximum increase of 2% per year) on the gross or net¹ long term disability benefit and taking into account any ad hoc indexing declared between 1980 and 1992 on the net long term disability benefit.

If, for any individual Class Member, (i) less (ii) is less than 0, the value shall be deemed to be equal to 0.

[7] From the date of this Order forward:

- a. the Cost of Living Allowance provisions shall continue to be calculated on the net long term disability benefit and only applied to the most recent year (capped at a maximum increase of 2% per year);

¹ For Class Members released on or after December 1, 1999, calculations would be based on gross amounts. For all other Class Members, calculations would be based on net amounts.

- b. the minimum salary, for the purpose of setting the initial benefit, will continue to be calculated based on the minimum salary as at the date of the class member's release; and
- c. the rehabilitation offset will continue to be calculated for regular members on the monthly salary at release without application of COLA increases.

[8] The Defendant, through The Manufacturers Life Insurance Company ("Manulife Financial"), will pay McInnes Cooper in trust the sum of the following for each Class Member (collectively referred to as the "Administrative Correction"):

- a. the amount that would have been paid to each Class Member had the Cost of Living Allowance increases been rounded up to the nearest .25% in 2002, 2004 and 2007, less the amount actually paid to the date of this Order;
- b. the amount that would have been paid to each class member had the Cost of Living Allowance been calculated on a 12 month average period ending on September 30, less the amount actually paid to the date of this Order;
- c. the amount that would have been paid to each Class Member had there not been Cost of Living Allowance overpayments and subsequent underpayments, less the amount actually paid to the date of this Order.

For Class Members who continue to be in receipt of LTD benefits, their benefits shall be adjusted on a go forward basis to reflect the corrected amount related to the Administrative Correction.

[9] Interest paid on the Principal Refund and Administrative Correction shall be simple interest calculated as follows:

- a. 6% annually from February 1, 1992 to December 31, 1995;
 - b. 5% annually from January 1, 1996 to December 31, 2008;
 - c. 3% annually from January 1, 2009 to the date the amount is paid to McInnes Cooper in Trust;
- (collectively, the "Interest Amount.")

[10] If a Class Member had a Pension Act Offset debt cancelled by the Court's May 1, 2012 Order and that debt cancellation was not factored into the calculation of the Class Member's first refund in this action, the Principal Refund shall be reduced by the Pension Act debt cancelled. Collectively, the Principal Refund, Administrative Correction, and the Interest Amount shall be referred to as the "COLA Refund." If the Administrative Correction is negative, it can be used to reduce the COLA Refund otherwise payable, but in no event shall an amount be left owing from the Class Member to the Defendant arising from the Administrative Correction.

[11] The COLA Refund payable to any Class Member shall be reduced by any amount owing by the Class Member to Manulife Financial not arising from the Pension Act Offset (the "Non-Pension Act Overpayment Recovery.")

[12] The Defendant, through Manulife Financial, shall remit to McInnes Cooper in Trust the COLA Refund payable to each Class Member, less any statutorily required withholding tax (the "Withholding") and less any Non-Pension Act Overpayment Recovery.

[13] The Defendant, through Manulife Financial, shall accrue the COLA Refunds payable and deliver those to Class Counsel on a monthly basis, on the seventh day of each month, commencing in January 2015 and to be completed within 12 months of this Order. The COLA Refunds are only payable if the Order has not been vacated pursuant to paragraph 30.

[14] Class Members may claim the tax withheld as a credit for tax paid as provided under the Income Tax Act.

[15] The Defendant, through Manulife Financial, will issue all required tax forms to Class Members and the Canada Revenue Agency (“CRA.”)

[16] The Defendant, through Manulife Financial, shall provide to Class Counsel the following information for each Class Member: the Principal Refund, the Administrative Correction, the Interest Amount, the Withholding Amount, and any required CRA forms which will be generated at the time the COLA Refund is processed.

[17] The Defendant, through Manulife Financial, shall provide McInnes Cooper with the Defendant’s information about the Class Members’ last known address, date of birth, e-mail address and telephone number. The Defendant shall not provide this information on Class Members who have opted out.

[18] The Defendant shall retain her usual rights under SISIP Policy 901102 in relation to the provision of or requests for medical or financial evidence for future payments other than the COLA Refund.

[19] Payments in respect of Class Members who are deceased at June 20, 2014 shall be payable to the date of death, which payments shall be paid only and directly to living persons who were eligible "Dependants" at the time of the Class Member's death as defined in Part I of SISIP Policy 901102. Payments are to be made in the following priority:

- a. All of the payments shall be paid to the surviving "Spouse" of the deceased member, with "Spouse" being defined as set out in Part I of SISIP Policy 901102 with reference to the member's date of death.
- b. If there is no surviving spouse of the deceased member, all payments shall be divided equally and paid to the "Dependent Children" as defined in part I of the SISIP Policy with reference to the member's date of death.
- c. If there is no surviving "Spouse" or surviving "Dependent Children" as defined under Part I of SISIP Policy 901102 with reference to the member's date of death, no payments shall be payable by the Defendant.

[20] Claimants in respect of deceased Class Members under paragraph 19 shall be required to execute a declaration in the form of Annex B to this Order for Spouses/Common Law Partners or Annex C to this Order for Children.

[21] If a Class Member dies after June 20, 2014, but before receiving his or her COLA Refund, the COLA Refund will be paid to that Class Member's estate.

[22] In the event that a Class Member inadvertently receives a COLA Refund that is greater than the COLA Refund that the Class Member is entitled to under this Order (an "Overpayment"), Manulife Financial shall, upon discovery of the Overpayment, immediately request that the amount of the Overpayment be returned. Manulife Financial shall retain its usual rights under SISIP Policy 901102 in relation to the recovery of Overpayments should the Overpayment not be returned upon request.

[23] Her Majesty the Queen in Right of Canada, her heirs, successors, and assigns, Manulife Financial, the Department of National Defence, Veterans Affairs Canada, the Treasury Board of Canada and Class Counsel, including but not limited to McInnes Cooper and Branch MacMaster shall be held harmless from any and all claims, suits, actions, causes of action, or demands whatsoever by reason of or resulting from a payment to a spouse, common law partner, dependent child or estate pursuant to this Order.

[24] Deloitte (the "Monitor") shall be appointed to review, monitor and report quarterly on the process of the Defendant's compliance with this Order until such time as the Court directs. The Monitor's accounts shall be paid by the Defendant and any dispute on these accounts or the scope of their work shall be resolved by the Court.

[25] Class members are deemed to provide a release in favour of the Defendant in the following form:

IN CONSIDERATION of the Defendant's agreement to the terms of this Order, each Class Member DOES HEREBY RELEASE and forever discharge the Defendant and her officers, directors, employees, agents, parent, subsidiaries, affiliates, predecessors, successors, and assigns, jointly and severally, from any and all losses, damages, debts, liabilities, costs, claims, suits, actions, causes of action, and demands whatsoever which the Class Member ever had, now has, or which the Class Member or his or her heirs, executors, successors or assigns may at any time in the future have against the Defendant by reason of or resulting from the Offset of Pension Act benefits, the calculation of Cost of Living Allowance increases, the calculation of the offset for employment income earned as part of a rehabilitation program, or the determination of minimum salary, including all claims raised or capable of being raised in this action.

[26] Class Members will be provided notice in the form attached as Annex D (the "Notice") and in the manner set out below:

- a. The Defendant through Manulife Financial, shall distribute the appropriate Notice to the last known address on file for the Class Members within 10 days of the issuance of this Order;
- b. The Notice will be published on Class Counsel's website, and a link to same shall be placed on the front page of the Veterans Affairs Canada and SISIP websites within 10 days of the issuance of this Order;
- c. The Notice shall be emailed by Class Counsel to class members of whom they are aware within 10 days of the issuance of this Order;
- d. The parties will issue a joint press release in respect of the Notice within 10 days of the issuance of this Order;

- e. The Defendant will pay the costs of providing Notice, except for the cost of publishing the Notice on Class Counsel's website and delivering the emails to known class members;
- f. The Defendant will advise Class Counsel of any Notice returned to sender, and Class Counsel will be entitled to take any further steps to locate this individual at their own expense; and
- g. The opt out form shall be in the form of Annex E.

[27] From the amount payable under paragraph 13, Class Counsel shall be entitled to deduct:

- a. an amount equal to 8% of the COLA Refund for its legal fees.
- b. an amount equal to .038% of the COLA Refund for its disbursements.
- c. the statutorily required GST, HST and applicable provincial sales tax from the Refund and remit that amount to the Canada Revenue Agency or applicable provincial agency.

[28] At the same time that the payment referred to in paragraph 13 is made, the Defendant shall pay McInnes Cooper \$19 for each Class Member paid with regard to their administrative expenses.

[29] Class Counsel shall not deduct or charge any legal fees or disbursements on any increased or new monthly payments after the date of this Order.

[30] The Court will vacate this order if more than 10 Class Members have opted out by the conclusion of the Opt Out Period and the Defendant elects in her sole discretion to end the Agreement. The Defendant shall give written notice of her election to the Court and Class Counsel no later than 5 days after the expiration of the Opt Out Period. If this Order is vacated, the parties shall be returned to the position they would have been in had this Order not been issued.

[31] The Court retains general supervisory jurisdiction over the Action as well as any issues arising that may be brought forward to the Court on application of any party.

[32] This Order is made on a without costs basis.

"R.L. Barnes"

Judge

TAB A

Court File Number: T-463-07

**FEDERAL COURT
CERTIFIED CLASS ACTION**

BETWEEN:

DENNIS MANUGE

PLAINTIFF

AND:

HER MAJESTY THE QUEEN

DEFENDANT

FOURTH AMENDED STATEMENT OF CLAIM TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiff's solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this Statement of Claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your Statement of Defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone: 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____

Issued by: _____

[Registry Officer]

Address of local office: 1801 Hollis Street,
17th Floor, Suite 1720
Halifax, N.S. B3J 1S7

TO: The Attorney General of Canada
Attention: Mr. William F. Pentney, Deputy Attorney General of Canada

CLAIM

1. The Plaintiff claims on his own behalf and on behalf of all class members (the "Class"):
 - (a) A declaration that section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 is unlawful;
 - (b) A declaration that section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 is *ultra vires* the legislative authority of the Defendant;
 - (c) A declaration that the Defendant has breached the public law duty owed to the Plaintiff and the Class to fulfill its obligations under the *Pension Act*;
 - (d) A declaration that the benefits paid and/or payable to the Plaintiff and the Class pursuant to the Pension Act, R.S.C. 1985, c. P-6, as amended (the "Pension Act") have been unlawfully "assigned, charged, attached, anticipated, commuted or given as security" by the Defendant contrary to section 30 of the Pension Act as a result of the application of section 24(a)(iv) of S.I.S.I.P. Policy 901102;
 - (e) A declaration that section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 infringes the equality rights of the Plaintiff and the Class under s.15(1) of the *Canadian Charter of Rights and Freedoms* (the "Charter") to live free from discrimination that cannot be saved under section 1 of the Charter;
 - (f) A declaration that the Defendant has breached the fiduciary duties owed to the Plaintiff 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;
 - (g) A declaration that the Defendant has acted in bad faith in the implementation of section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 and its impact on the Plaintiff 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;

- (h) An Order pursuant to section 24 of the Charter that section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 be expunged;
- (i) An Order that damages are a just and appropriate remedy pursuant to section 24 of the Charter that the Plaintiff and the Class be reimbursed in an amount equal to the amount of long term benefits deducted pursuant to section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 from the amount of long term disability benefits otherwise payable to the Plaintiff and the Class;
- (j) In the alternative, damages in an amount equal to the amount of benefits payable to the Plaintiff and the Class unlawfully and wrongfully deducted pursuant to section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 from the amount of long term disability benefits otherwise payable to the Plaintiff and the Class;
- (k) In the further alternative, an Order for restitution;
- (k2) In the further alternative, an Order that the long term disability payments paid and to be paid to the Plaintiff and the Class under SISIP Policy 901102 be calculated to include the VAC Disability Pension as "monthly pay".
- (l) Liability and general damages for:
 - (i) discrimination;
 - (ii) breach of fiduciary duties; and
 - (iii) bad faith.

- (m) Punitive, exemplary and aggravated damages;
- (n) Interest pursuant to the *Federal Courts Act*;
- (o) Costs of this action on a solicitor-and-client basis; and
- (p) Such further relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff is a former member of the Canadian Forces.
3. The Defendant, Her Majesty the Queen, is joined herein as a representative of the Federal Government of Canada, the Minister of National Defence, the Chief of the Defence Staff for the Canadian Forces and the Treasury Board.
4. The Minister of National Defence, is responsible for the management and direction of the Canadian Forces pursuant to section 4 of the *National Defence Act*, R.S.C. 1985 c. N-5, as amended (the "NDA").
5. The Chief of the Defence Staff for the Canadian Forces is, under the direction of the Minister of Defence, charged with the control and administration of the Canadian Forces pursuant to section 18 of the NDA and the policy owner of S.I.S.I.P. Policy 901102. The Chief of Defence Staff designed and implemented the S.I.S.I.P. Policy 901102 pursuant to subsection 39(1) of the NDA. The Director of Personnel at the Department of National Defence was responsible for the control and administration of the SISIP Policy.
6. The Treasury Board is responsible for the rates and conditions of issue of pay of officers and non-commissioned members of the Canadian Forces pursuant to section 35 of the NDA.

NATURE OF THE MATTERS AT ISSUE

SISIP LTD Benefits & The Clawback Provision

7. The Plaintiff served as a member of the Canadian Forces pursuant to the NDA commencing on August 9, 1994 until his required medical release from service on December 29, 2003.

8. As a member of the Canadian Forces, the Plaintiff was required to participate in S.I.S.I.P. Policy 901102, a group insurance plan for members of the Regular Force and Reserve Force of the Canadian Forces.
9. The Chief of the Defence Staff for the Canadian Forces, is the policy owner of S.I.S.I.P. Policy 901102.
10. S.I.S.I.P. Policy 901102 is sponsored and governed by the Treasury Board.
11. The long term disability insurance provided for under S.I.S.I.P. Policy 901102 is an "administrative services only" ("ASO") plan of insurance administered by SISIP Financial Services and Manulife Financial.
12. An ASO plan of insurance is not underwritten by an insurer but rather completely funded by the premiums remitted by its members and plan sponsor. The administrator of the plan is paid a fee for the services provided and the claims made upon the plan are paid out of the pool of funds available from the premiums remitted.
13. Participation in S.I.S.I.P. Policy 901102 is mandatory for all Regular Force and Reserve Force Members. Regular Force members collectively must pay 15% of the premiums required to fund the plan through payroll deductions with the remaining 85% of the premiums paid by the Treasury Board.
14. Part III(B) of S.I.S.I.P. Policy 901102 provides Long Term Disability Insurance for members of the Canadian Forces released after November 30, 1999.
15. Pursuant to section 23 of Part III(B) of S.I.S.I.P. Policy 901102, the monthly income benefit payable is an amount equal to 75% of the member's monthly pay in effect on the date of release from the Canadian Forces ("SISIP LTD Benefits").
16. Pursuant to section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102, the SISIP LTD Benefits payable are reduced by the amount of the total monthly income benefits payable to the member under the Pension Act (the "Clawback Provision").
17. The Plaintiff qualified to receive long-term disability payments under Part III(B) of S.I.S.I.P. Policy 901102 on his release from the Canadian Forces on or about December

30th, 2003. The Plaintiff received SISIP LTD Benefits for a period of 24 months until December of 2005.

18. Prior to his required medical release from the Canadian Forces, the Plaintiff applied for, and was awarded and received a monthly compensatory disability pension pursuant to the Pension Act as administered by the Department of Veterans Affairs (the "VAC Disability Pension").
19. The monthly amount of the VAC Disability Pension payable to the Plaintiff pursuant to the Pension Act totalled \$386.28 representing compensation for a 20% permanent medical impairment suffered as the result of an injury sustained while serving in the Canadian Forces.
20. During the 24 month period the Plaintiff received SISIP LTD Benefits, the monthly amount of SISIP LTD Benefits purported by the Defendant to representing 75% of his gross monthly income with the Canadian Forces was reduced by the monthly amount of VAC Disability Pension purportedly pursuant to the Clawback Provision.
21. The Plaintiff has suffered financial loss and damages attributable to the wrongful acts committed by the Defendant.

Unlawful, Ultra Vires and Contrary to the Pension Act

22. The Plaintiff and the Class say that the Clawback Provision is unlawful and that the Defendant has wrongfully and without legal or statutory authority deducted the VAC Disability Pension from the calculation of the SISIP LTD Benefits payable to the Plaintiff and the Class.
23. The Plaintiff and the Class say that the Clawback Provision is *ultra vires* the legal or statutory authority of the Defendant under the NDA to manage, control, administer and establish rates and conditions of pay for the Canadian Forces.
24. The Plaintiff and the Class say that the VAC Disability Pension payments are statutorily determined benefits paid and/or payable as compensation for injuries sustained while serving in the Canadian Forces. The payments are not income, and cannot lawfully be

deducted by the Defendant from SISIP LTD Benefits otherwise payable to the Plaintiff and the Class absent specific statutory authority under the Pension Act.

25. The Plaintiffs in the Class say that the VAC Disability Pension awarded on the Pension Act is compensation in respect of the injury, damage or loss sustained while serving in the Canadian Forces.
26. Section 111 of the *Pension Act* and Section 9 of the *Crown Liability and Proceedings Act* both prohibit the Plaintiff and the Class from bringing an action against the Defendant for losses sustained in respect of the injury, damage or loss sustained while serving in the Canadian Forces.
27. The SISIP LTD Benefits payable under SISIP Policy 901102 are not compensatory in respect of the injury, damage or loss sustained while serving in the Canadian Forces but rather income replacement akin to a private policy of insurance payable to a qualified contributor under the policy in relation to his or her disability.
28. The VAC Disability Pension is a pension paid on the same basis as a tort claim while the SISIP LTD Benefits are paid on the same basis as an insurance claim.
29. The Plaintiff and the Class say that the VAC Disability Benefits are statutorily protected benefits pursuant to the provisions of the Pension Act that the Defendant cannot indirectly recover by the application of the Clawback Provision absent specific legislative or legal authority.
30. The Plaintiff and the Class say that the VAC Disability Pension benefits payable to him pursuant to the Pension Act have been unlawfully "assigned, charged, attached, anticipated, commuted or given as security" by the Defendant contrary to section 30(1) of the Pension Act as a result of the application Clawback Provision.
31. The Plaintiff and the Class say that the Defendant has breached section 30 of the Pension Act in that the Clawback Provision effectively operates to assign and anticipate the receipt of the VAC Disability Pension contrary to section 30(1).

32. The Plaintiff and the Class say that the only manner in which a VAC Disability Pension may be assigned or anticipated has been specifically legislated in section 30(2) of the Pension Act.
33. The Plaintiff and the Class say that the Defendant has unlawfully seized and executed upon his VAC Disability Pension in law or in equity contrary to section 30(1.1) of the Pension Act.
- ~~33A. The Plaintiff and the Class further say that the Defendant had no lawful basis to reduce their SISIP LTD Benefits due to VAC Disability Pension payments received by the Plaintiff and the Class. In particular, the Plaintiff and the Class say that the VAC Disability Pension payments are not "monthly income benefits" and do not meet any of the terms in the Clawback Provision. As a result, the VAC Disability Pension should not have caused a reduction in SISIP LTD Benefits. The Defendant breached the terms of S.I.S.I.P. Policy 901102 by reducing their SISIP LTD Benefits without any legal right to do so.~~
- ~~33B. Further and in the alternative, the Plaintiff and the Class say that the Defendant breached the terms of S.I.S.I.P. Policy 901102 by improperly calculating the SISIP LTD Benefits of the Plaintiff and the Class. In particular, the Defendant failed to include their VAC Disability Pension payments as part of their "monthly pay in effect on the date of release from the Canadian Forces" for the purposes of calculating the SISIP LTD Benefits.~~
- ~~33C. Furthermore, the Defendant failed to base the Class Members' minimum salary as that of a senior private in the standard pay group for the purposes of calculating LTD benefits as required by section 1(e)(iv) of Part III(B) of S.I.S.I.P. Policy 901102.~~
- ~~33D. The Defendant did not properly interpret section 28 of Part III(B) of S.I.S.I.P. Policy 901102 when calculating the offset for rehabilitation employment income. Specifically, the Defendant failed to adjust a member's monthly salary at release to "the present value by application of the 'CPI' for each year benefits are payable."~~
- ~~33E. The Plaintiff and the Class further say that the Defendant did not properly calculate the consumer price index increases under S.I.S.I.P. Policy 901102. In particular, the Plaintiff and the Class say:~~

a) the Defendant did not apply the consumer price index increases to the gross amount of the SISIP LTD Benefits as required by S.I.S.I.P. Policy 901102. Rather, the Defendant applied the consumer price index increases to the net amount of the SISIP LTD Benefits;

b) the Defendant did not apply the aggregate increase in the consumer price index (capped at a maximum increase in benefits of 2% per year) from the date the benefit commenced on the SISIP LTD Benefits as required by S.I.S.I.P. Policy 901102;

c) in 2002, 2004 and 2007, the Defendant did not round up the consumer price index increase to the next .25% as required by S.I.S.I.P. Policy 901102;

d) beginning in 2001, the Defendant did not use the indexation calculation as set out in S.I.S.I.P. Policy 901102. Under S.I.S.I.P. Policy 901102, a 12 month average period ending in September should be used to calculate the annual indexation. Instead, the Defendant used the month of October; and

e) the Defendant improperly reduced Class members' benefits in 1999 and 2000 in an attempt to correct alleged overpayments in 1992 and 1994. This reduction resulted in an underpayment of benefits to the Class.

Breach of Public Law Obligations

34. The Plaintiff and the Class say that the Pension Act is a complete statutory scheme concerning the rights and obligations of the Defendant with respect to the payment of benefits to the Plaintiff and the Class and that the Plaintiff has a public law duty to fulfil its obligations as provided under the Pension Act.
35. That as a result of the application of the Clawback Provision the Defendant has wrongfully breached the Pension Act and the public law duties owed to the Plaintiff and the Class under the Pension Act.

Breach of s.15(1) Charter Rights

36. The Plaintiff and the Class say that the Clawback Provision deprives them of their equality rights under s.15(1) of the Charter to live free from discrimination.
37. As of October 27, 2000 a member of the Canadian Forces who qualified for a VAC Disability Pension under the Pension Act who is able to continue to serve by meeting Canadian Forces *bona fide occupational requirements* ("bfors") is entitled to receive a VAC Disability Pension in addition to 100% of his service income.
38. As of October 27, 2000 a member of the Canadian Forces who qualifies for a VAC Disability Pension under the Pension Act who is unable to continue to serve as a result of not meeting Canadian Forces *bfors* receives income replacement in the form of SISIP LTD Benefits reduced by the amount of the VAC Disability Pension.
39. The Plaintiff and the Class say that the Clawback Provision breaches s. 15 of the Charter by creating a two-tiered benefit scheme based upon the degree and extent of their disability and whether they can meet *bfors* in order to continue to serve in the Canadian Forces.
40. As of April 6, 2006, the Defendant legislated and proclaimed into force the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (the "New Veteran's Charter") which provides that disabled members of the Canadian Forces injured on or after April 6, 2006 may apply for a disability award under the New Veteran's Charter and receive a lump sum compensatory disability award which is not subject to the Clawback Provision.
41. The New Veterans Charter does not eliminate the Clawback Provision for those members of the Class in receipt of a VAC Disability Pension as of April 6, 2006 and entitled to SISIP LTD Benefits post-April 6, 2006 as a result of their required medical release.
42. The New Veterans Charter does not retroactively reimburse the Plaintiff and the Class for monies deducted from SISIP LTD Benefits as a result of the Clawback Provision.
43. The Plaintiff and the Class say that the introduction of the New Veterans Charter deprives the Plaintiff and the Class of their equality rights under s.15(1) of the Charter to live free from discrimination by creating a two-tiered disability benefit scheme based upon the

temporal date of disability and date of application of the Pension Act and New Veterans Charter.

Unjust Enrichment

44. The Plaintiff and the Class say that in the application of the Clawback Provision, the Defendants have wrongfully and unjustly received and retained a corresponding benefit to the detriment of the Plaintiff and the Class in that the Clawback Provision has relieved the Defendant from inevitable expenses they were required to incur pursuant to the Pension Act and in the provision of long term disability benefits under SISIP Policy 901102.
45. The Plaintiff and the Class say that there is no juristic reason for this enrichment.

Breach of Fiduciary Duties

46. The Plaintiff and the Class say that the Defendant, as the sponsor and administer of SISIP Policy 901102, owes fiduciary duties to the Plaintiff and the Class, being former servants and members of the Canadian Forces injured during their course of service and suffering resulting disabilities causing them to be unable to continue to serve.
- ~~46A. The Plaintiff and the Class were required to participate in and contribute to SISIP Policy 901102 while members of the Canadian Forces. The Defendant created, sponsors and administers SISIP Policy 901102 on behalf of and for the benefit of the Plaintiff and the Class. As a result, the Defendant is a fiduciary to the Plaintiff and the Class.~~
47. The Plaintiff and the Class say that the fiduciary duties owed to them include, but are not limited to, duties of loyalty, good faith, equal treatment, fairness, civility, decency, respect and dignity.
48. The Plaintiff and the Class say that the Defendant has breached the fiduciary duties of good faith, equal treatment and dignity by:
- 1) implementing the Clawback in a manner that discriminates against disabled members who are medically released from the Canadian Forces compared with those who able to continue to serve.

(2) eliminating the Clawback on a go forward basis with the introduction of the New Veterans Charter while maintaining the Clawback for those injured prior to April 1, 2006; and

(3) the improper inclusion of the VAC Disability Pension as 'monthly income benefits' in calculating the reduction in benefits payable under SISIP Policy 901102.

Bad Faith

49. The Plaintiff and the Class say that the Defendant has been aware of its unlawful conduct, discriminatory conduct and breach of fiduciary duties owed to the Plaintiff and the Class since October of 2003 and have acted in bad faith in failing to redress the breach.

50. The unfairness of the Clawback Provision has been the subject of a Special Report of the Ombudsman for the Department of National Defence and Canadian Forces dated October 30, 2003 entitled "Unfair Deductions from S.I.S.I.P. Payments to Former Members" (the "Special Report").

51. The Special Report contained the following conclusion of the Ombudsman with respect to the Clawback Provision:

Serving CF members receiving disability pensions through VAC under the Pension Act do not have their income reduced because of the pension they receive to compensate them for their disability. It simply does not seem fair that injured and ill members who are released from the CF for medical reasons should have their disability insurance benefit paid, which is intended to replace income as CF members, reduced because of the same pension benefits.

52. The Special Report contained the following recommendations:

- (a) The Minister of Defence present the necessary submission to the Treasury Board Secretariat of Canada and ensure all other necessary steps are taken to amend the SISIP long term disability insurance policy so that Pension Act

disability pensions do not reduce the amount of SISIP long term disability benefits payable to former CF members;

- (b) The Minister of National Defence take the necessary steps to ensure former CF members who had their SISIP long term disability benefits reduced on account of disability pensions received under the Pension Act should be reimbursed for the amounts deducted from their benefits as of October 27, 2000.
53. The Plaintiff and the Class say that on or about November 4, 2003, the House of Commons Standing Committee on National Defence and Veterans Affairs (SCONDVA) unanimously passed a motion imploring the Minister of National Defence and Federal Government of Canada to accept and enact the recommendations contained in the Special Report forthwith.
54. The recommendations contained in the Special Report were the subject of a follow-up letter from the Ombudsman to the Minister of National Defence on October 26th, 2005 ("Ombudsman's Letter #1").
55. Ombudsman's Letter #1 identified the fundamental unfairness and inequities associated with the introduction the New Veterans Charter and its failure to address the Clawback Provision affecting the Plaintiff and the Class.
56. The recommendations contained in the Special Report were the subject of a second follow-up letter from the Ombudsman to the Minister of National Defence on March 6th, 2007 ("Ombudsman's Letter #2").
57. Ombudsman's Letter #2 further identifies the fundamental unfairness of the Clawback Provision stating as follows:

It is fundamentally unfair that military members who are medically unable to serve in the Canadian Forces – and who are forced to give up their career and way of life – do not receive the full benefit of their Pension Act disability pension. But this is clearly the case as a result of their SISIP LTD monthly

income replacement benefit being reduced by the amount of their disability pension.

This unfairness becomes even more evident when those who are forced to leave the Canadian Forces are compared with military personnel who have been injured or disabled but whose injuries or disabilities are less serious. The latter can remain in the Canadian Forces, receiving their full military pay and adding to their retirement plan, while still being entitled to a disability pension under the Pension Act.

The fact that the group of individuals receiving SISIP LTD is vulnerable, and already disadvantaged by disabilities serious enough to require them to give up their careers and collect long-term disability, leads me to the view that the inequity might very well be serious enough to attract the protection of human rights legislation, as well as the protection of the equality provisions set out in section 15 the *Canadian Charter of Rights and Freedoms*, which identify physical and mental disabilities as prohibited grounds of discrimination.

58. The Plaintiff and the Class say that the Defendant has acted in bad faith entitling them to an award of general, punitive, exemplary and aggravated damages.

THE CLASS

59. The Special Report cited the following facts with respect to the Class:

- (a) At the end of September 2002, S.I.S.I.P. had 1,791 active LTD claims;
- (b) Approximately 56% of the recipients of SISIP LTD Benefits also receive VAC pension benefits under the Pension Act.

60. Ombudsman's Letter #2 cited the following fact with respect to the losses sustained by the Class:

In October 2006, we were informed that the Office of the Superintendent of Financial Institutions (OSFI) had reviewed the estimates and determined that the cost of eliminating the Pension Act deductions from SISIP LTD monthly benefits, retroactive to October 2000, would be between \$275 million and \$295

million. Given that these figures were reviewed and verified by OSFI, I have no reason to question their accuracy.

61. The number of Class members is, as yet, undetermined, however, based upon the Special Report and the Ombudsman's Letter #2, the proposed Class is so large that joinder of all members of the Class as Plaintiffs would be impractical.
62. There are questions of law and fact common to the Class. The claims of the Plaintiff are typical of the claims of the Class and the Plaintiff herein will adequately represent and protect the interests of the Class.
63. 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.
64. 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.
65. The Plaintiff, who is a member of the Class, has sustained financial loss as a result of the unlawful conduct of the Defendant as alleged in the Statement of Claim and has no conflict with other members of the Class.
66. 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.
67. The questions of law and fact common to the Class, which predominate over individual questions, include, but are limited to the following:
 - (a) Whether section 24(a)(iv) of Part III (B) of S.I.S.I.P. Policy 901102 is unlawful;
 - (b) Whether section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 is ultra vires the legislative authority of the Defendant;

- (c) Whether the benefits paid to the Plaintiff and the Class pursuant to the *Pension Act*, R.S.C. 1985, c. P-6, as amended (the “Pension Act”) have been unlawfully “assigned, charged, attached, anticipated, commuted or given as security” by the Defendant contrary to section 30 of the Pension Act as a result of the application of section 24(a)(iv) of S.I.S.I.P. Policy 901102;
- (d) Whether section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102 infringes the equality rights of the Plaintiff and the Class under s.15(1) of the Charter to live free from discrimination that cannot be saved under section 1 of the Charter;
- (e) Whether the Defendant has been unjustly enriched;
- (f) Whether the Defendant has breached the fiduciary duties owed to the Plaintiff and the Class;
- (g) Whether the Defendant has acted in bad faith in the implementation of section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102;
- (h) Whether the Plaintiff and the Class are entitled to relief under section 24 of the Charter and what relief should be granted;
- (i) Whether special damages are payable by the Defendant;
- (j) Whether the Defendant is liable for general damages for discrimination, breach of fiduciary duties and bad faith and the amount of general damages payable;
- (k) Whether the conduct of the Defendant justifies an award of punitive, exemplary and aggravated damages;
- (l) Whether restitution should be awarded to the Plaintiff and the Class;
- (m) Whether an award of aggregate damages should be awarded to the Class;
- (n) Whether interest is payable to the Plaintiff and the Class pursuant to the *Federal Courts Act*; and

- (o) Whether the costs of this action should be awarded to the Plaintiff and the Class on a solicitor-and-client basis;
- (p) Are the pension payments made pursuant to s. 21 of the Pension Act "total monthly income benefits" as that term is described in section 24(a)(iv) of Part III(B) of S.I.S.I.P. Policy 901102;
- (q) Are the pension payments made pursuant to s. 21 of the Pension Act "monthly pay in effect on the date of release from the Canadian Forces" as that term is described in section 23(a) of Part III(B) of S.I.S.I.P. Policy 901102; and
- (r) Did the Defendant properly calculate the consumer price index increases under S.I.S.I.P. Policy 901102 from January 1, 1971 to the date of this Order?
- (s) Did the Defendant properly calculate the offset for employment income earned as part of a rehabilitation program?
- (t) Did the Defendant properly set the Class Members' minimum salary for the purposes of calculating LTD benefits?

PARTICULARS OF INDIVIDUAL DAMAGES

68. The particulars of the financial losses suffered by the individual members of the Class reasonable attributable to those wrongful acts committed by the Defendant will be provided before the trial of such individual damage assessments as are necessary and as this Honourable Court may direct.

PUNITIVE, EXEMPLARY AND AGGRAVATED DAMAGES

69. The Defendant's conduct involves the calculated breach of, or wilful blindness to duties owed to the Plaintiff and the members of the Class, know or which ought to have been known to the Defendant.
70. The Defendant's deliberate conduct has caused financial losses to the Plaintiff and members of the Class.

71. The Defendant's conduct has materially aggravated the damages suffered by the Plaintiff and individual members of the Class and as such warrants an award of aggravated damages.
72. The Defendant's conduct has been egregious and warrants an award of punitive and exemplary damages.

COSTS

73. The Defendant's conduct is egregious and warrants an award of costs on a solicitor and client basis.

LEGISLATION

74. The relief claimed in this action is pursuant to and arises from the Pension Act, the *National Defence Act*, *Federal Courts Act*, the Federal Court Rules 1998, as amended, the *Canadian Charter of Rights and Freedom*, and the *Crown Liability and Proceedings Act*.
75. The Plaintiff proposes that this action be tried in Halifax, in the Province of Nova Scotia.

DATED at Halifax, in the Province of Nova Scotia, this _____ day of April, 2014.

PLACE OF TRIAL: HALIFAX, NOVA SCOTIA

Peter J. Driscoll
Solicitor for the Plaintiff

THIS FOURTH AMENDED STATEMENT OF CLAIM is given by PETER J. DRISCOLL, of the law firm McInnes Cooper, 1300 - 1969 Upper Water Street, Purdy's Wharf Tower II, P.O. Box 730, Halifax, Nova Scotia, B3J 2V1.

TAB B



Annex B

MANUGE v. HER MAJESTY THE QUEEN

DECLARATION OF _____

I, _____, do solemnly declare:

1. I was the spouse of _____, deceased at the time of his/her death.

My address is: _____

["Spouse" is defined in SISIP Policy No. 901102 as "a person married to a member or a beneficiary as a result of a valid civil or religious ceremony. In addition, the spouse of a member shall include a person for whom the member has made a written declaration that such person is the member's spouse. The spouse of a member or a beneficiary shall also include a person for whom it can be established that for at least 12 consecutive months such person has resided continuously with the member or the beneficiary ['common law spouse',] as the case may be...If the member or the beneficiary has more than one spouse applying the above criteria, only the most recent shall be considered a 'spouse' for purposes of this policy."

"Spouse" does NOT include a former spouse who, at the time of death, was divorced from the deceased or in the case of a "common law spouse" had ceased cohabiting with him or her.]

2. To my knowledge, I was the most recent "spouse" of the deceased at the time of his/her death under the policy definition.

DATED at _____, in the Province of _____, this _____ day of _____, 2013.

Witnessed:

TAB C



Annex C

MANUGE v. HER MAJESTY THE QUEEN

DECLARATION OF _____

I, _____, do solemnly declare:

1. I was a dependent child of _____, deceased, at the time of his/her death.

My address is: _____

["Dependent Child" is defined in SISIP Policy No. 901102 as a natural child, step-child, legally adopted child, or a child to whom a member stood *in loco parentis* who was unmarried and not employed on a regular and full-time basis, ineligible to be insured as a member under SISIP Policy No. 901102, and dependent upon the deceased member or a legal guardian, or in the absence of a legal guardian, a relative of either the deceased member or the deceased member's former spouse at the time of the deceased member's death. The term Dependent Child shall apply until the child's 25th birthday. However, there shall be no maximum age limit applied if the Dependent Child has been continuously and wholly dependent upon one of the parties delineated above, and unable to provide for his/her own maintenance as a result of a physical or mental infirmity.]

2. I am a dependent child because:

- I was under the age of 25 at the time of the deceased's death.
- I was over the age of 25 at the time of the deceased's death, but continuously and wholly dependent upon one of the parties delineated above, and unable to provide for my own maintenance as a result of a physical or mental infirmity.

3. To my knowledge there is no living spouse of the deceased as defined in SISIP Policy No. 901102.

["Spouse" is defined in SISIP Policy No. 901102 as "a person married to a member or a beneficiary as a result of a valid civil or religious ceremony. In addition, the spouse of a member shall include a person for whom the member has made a written declaration that such person is the member's spouse. The spouse of a member or a beneficiary shall also include a person for whom it can be established that for at least 12 consecutive months such person has resided continuously with the member or the beneficiary [common law

spouse'], as the case may be...If the member or the beneficiary has more than one spouse applying the above criteria, only the most recent shall be considered a 'spouse' for purposes of this policy."

"Spouse" does NOT include a former spouse who, at the time of death, was divorced from the deceased or in the case of a "common law spouse" had ceased cohabiting with him or her.]

4. To my knowledge:

- There are no other living dependent children of the deceased.
- There are other living dependent children of the deceased, whose names and addresses are listed below:

DATED at _____, in the Province of _____, this
_____ day of _____, 2013.

Witnessed:

TAB D



Notice of Approval of Settlement in the Class Action Regarding the Calculation of the SISIP Cost of Living Allowance

Manuge v Her Majesty the Queen, Court File No. T-463-07.

What is this settlement about?

The Plaintiff, Dennis Manuge, argued that the Defendant did not properly calculate Cost of Living Allowance ("COLA") increases as required by the SISIP Long Term Disability Plan.

The parties have now come to a settlement agreement on this issue. ("COLA Settlement") The Settlement is over and above any benefits received by certain class members as a result of the elimination of the *Pension Act* offset.

On ~~the~~ the Court approved the settlement. The Court's decision is available on www.leavenovetbehind.ca.

Why am I getting this notice?

You have been identified as a member of the Class. The Agreement affects your rights.

Who are the Class Members?

The Court approved the following definition of the Class: "all former members of the Canadian Forces who were in receipt of long-term disability benefits under S.I.S.I.P. Policy No. 901102 on or before the date of this Order and whose benefits were subject to a Cost of Living Allowance increase from January 1, 1971 to the date of this Order."

This new Class definition expands the prior Manuge Class to include recipients of SISIP long term disability benefits that were not reduced by the Pension Act offset. This expansion is necessary because the alleged Cost of Living Allowance errors impact people whether or not they had an offset.

Class Members who are added by this expanded definition will have the right to opt out. **But if you opt out, you will not get any refund under the Agreement.** If you still want to opt out, you must contact McInnes Cooper. They will explain the process to you, and provide you with the required form. The required form to opt out has to be delivered to McInnes Cooper by insert date 60 days after the issuance of Order.

If you were already in the Manuge class, you will stay in the class. You don't need to do anything more to receive your benefits.

What are the terms of the Agreement?

In summary, the Agreement provides for the following:

1. All Class Members affected will receive the additional amount that would have been paid had the Cost of Living Allowance increases been rounded up to the nearest .25% in 2002, 2004 and 2007.

2. All Class Members will receive 74% of the amount that they would have received if their Cost of Living Allowance increase was calculated as an aggregate increase (capped at a maximum increase in benefits of 2% per year) from the date the benefit commenced.
3. All Class Members whose Cost of Living Allowance increases were subject to overpayments and subsequent underpayments in 1999 and 2000 will be compensated for the improper amount of those reductions.
4. All Class Members whose benefits were affected as a result of using incorrect dates to calculate the Cost of Living Allowance increases will be compensated.
5. All Class Members released on or after December 1, 1999 will receive 74% of the amount that they would have received if their Cost of Living Allowance increase was applied to their gross long term disability benefit before offsets, rather than their net long term disability benefit after offsets.
6. Class Members will receive simple interest on any amounts payable above calculated as follows:
 - a. 6% annually from February 1, 1992 to December 31, 1995;
 - b. 5% annually from January 1, 1996 to December 31, 2008;
 - c. 3% annually from January 1, 2009 to the date the amount is paid to McInnes Cooper in Trust.

The Defendant will correct future payments in relation to items 1, 3 and 4, but not 2 and 5. The Plaintiff has accepted this compromise in relation to future payments because the Defendant always retains the right to alter the terms of the policy on a going forward basis in any event.

The full terms of the Agreement are available at www.leaveovetbehind.ca

What do I have to do to make a claim?

You do not have to do anything right now.

Class Members will receive their refund automatically through McInnes Cooper.

Will there be deductions from the Refund?

As always with any SISIP LTD benefits, there will be an amount withheld for taxes. Your actual tax payable may be more or less than the amount withheld.

There will be an approximate *% deduction for legal fees, sales taxes and expenses. These amounts are tax deductible.

Finally, if you owe SISIP money for any other reason, this amount will be deducted.

When will I receive my Refund?

The Refunds will be processed beginning in January 2015 and will be completed by
Insert date 12 months from Order

What if I want more information?

For more information, please contact McInnes Cooper at:

SISIPClassAction@mcinnescooper.com
(902) 444-8417 (English)
(506) 877-0831 (French)

SISIP Class Action
McInnes Cooper
PO Box 730, Halifax, NS
B3J 2V1

TAB E



OPT OUT NOTICE

I do not want to participate in the class action *Dennis Manuge v. Her Majesty the Queen*,
Federal Court No. T-463-07.

**I understand that if I complete this form, I will not be able to seek recovery of any
damages in this action.**

Print Name

Sign Name

Address

Date

MAIL OR FAX THIS DOCUMENT NO LATER THAN * TO:

McInnes Cooper
Purdy's Tower II
901-1969 Upper Water Street
PO Box 730
Halifax, NS B3J 2V1
Fax: (902) 425-6350

Attention: Kristine Hunter

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-463-07

STYLE OF CAUSE: DENNIS MANUGE V. HER MAJESTY THE QUEEN

PLACE OF HEARING: HALIFAX, NS

DATE OF HEARING: JUNE 20, 2014

ORDER AND REASONS: BARNES J.

DATED: JULY 2, 2014

APPEARANCES:

Ward Branch
Peter Driscoll
Daniel Wallace

FOR THE PLAINTIFF

Paul Vickery
Travis Henderson
Lori Rasmussen

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Branch MacMaster
Halifax, NS

FOR THE PLAINTIFF

and

McInnes Cooper
Halifax, NS

William F. Pentney
Deputy Attorney General of Canada
Ottawa, ON

FOR THE DEFENDANT

and

Halifax, NS