

CANADA / JUDGMENT

Jost v. Canada (Attorney General)

2025 FC 1193

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DECIDED

4 July 2025

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Jost v. Canada (Attorney General)

Court (s) Database

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Date

2025-07-04

Neutral citation

2025 FC 1193

File numbers

T-972-17

Decision Content

Date: 20250704

Docket: T-972-17

Citation: 2025 FC 1193

Ottawa, Ontario, July 4, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DOUGLAS JOST

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

WHEREAS the Plaintiff and the Defendant have entered into a final Settlement Agreement dated March 21, 2025 in respect of the claims of the Plaintiff and Class Members against the Defendant;

AND WHEREAS this honourable Court approved the form of notice and plan for distribution of the notice of this motion by Order dated April 3, 2025 (the “Notice Order”);

AND UPON READING the Plaintiff’s and the Defendant’s motion records and written submissions with respect to approving the Settlement Agreement and payment of the counsel fees and honorarium of the Representative Plaintiff;

AND UPON BEING ADVISED of the Defendant’s consent to the form of the Order approving the Settlement Agreement and of the Defendant taking no position with respect to payment of the counsel fees and honorarium to the Representative Plaintiff;

AND UPON HEARING the motions made in writing and by oral submissions of counsel for the Plaintiff, and all interested parties, including any objections, written and oral;

AND UPON CONSIDERING the following:

I. Introduction [1] Before this Court are two separate motions brought under sections 334.29 and 334.4 of the Federal Courts Rules, SOR/98-106 [Rules]. The first motion seeks the judicial approval of a class action settlement (“Settlement Agreement”) while the second one asks the Court to approve the payment of the legal fees and disbursements sought by Class Counsel, Koskie Minsky LLP (“Class Counsel Fees”), and an honorarium to Mr. Douglas Jost, the Representative Plaintiff (“Honorarium”).

[2] In 2017, the Representative Plaintiff brought the class action proceeding against the Defendant, the Attorney General of Canada, in relation to the alleged improper pension administration to individuals who served in the Canadian Armed Forces (“CAF”) - Reserve Force (“Class Action”). After eight years of litigation, the Settlement Agreement, attached as Annex “A” to this Order, was reached and executed on March 21, 2025.

[3] For the reasons that follow, I will approve the Settlement Agreement, the Class Counsel Fees, and the Honorarium.

II. Background A. Procedural History [4] The Reserve Force Plan came into effect in 2007, providing pension benefits to Reserve Force Members payable upon release. This was the first pension plan created by Parliament in 40 years. Prior to its implementation, Canada was warned that its existing systems could not effectively manage the new pension plan. Upon implementation, CAF - Reserve Force Members faced substantial delays in receiving their pension entitlements and a backlog in pension administration processing.

- [5] In 2011, the Auditor General released a report that concluded, among other things, that the Reserve Force Plan was introduced without adequate planning and without adequately dealing with risks that management had identified prior to the coming into force date for the plan. The backlog persisted until pension administration was transferred to Public Services and Procurement Canada in or around July 2016, who cleared the backlog by the end of 2017.
- [6] Mr. Jost commenced this class action proceeding on June 30, 2017. The Statement of Claim alleged that Canada acted negligently and breached implied terms of contractual duties to the Plaintiff and the Class in the administration of the pension entitlements. While the pension benefits were ultimately paid, the Plaintiff alleges that the delay in payment caused actionable damages.
- [7] On November 4, 2019, this Court certified the action as a class proceeding.
- [8] The Defendant appealed the certification order. On December 10, 2020, the Federal Court of Appeal held that the Statement of Claim disclosed reasonable causes of action but remitted the certification motion back to the motion judge for determination.
- [9] The parties then reached an agreement on certification. The common issues that were certified concerned whether the Defendant breached its duty of care and contractual obligations owed to the Class Members in respect of the delayed pension payments. The following class was certified:

All individuals who:

- (a) served in the Canadian Armed Forces – Reserve Force;
 - (b) released from the Canadian Armed Forces between March 1, 2007 and October 31, 2017;
 - (c) were entitled to receive an Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit under the Regular Force Pension Plan or the Reserve Force Pension Plan; and
 - (d) did not receive payment of the Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit for more than 60 days from the date of release.
- [10] The trial was scheduled to begin on November 4, 2024.
- [11] Parties were engaged in trial preparation up to the eve of trial. The Plaintiff had served and filed expert reports and Requests to Admit, and on September 9, 2024, brought a motion to amend the common issues. On September 17, 2024, the Defendant requested the trial be extended by five days.

[12] Shortly after a full-day judicial mediation held on October 7, 2024, the parties reached an agreement on aggregate quantum. On October 16, 2024, the parties agreed to a timetable for the return of the fee and settlement approval motions. In November 2024, Canada advised that it was unable to satisfy the previously agreed to timetable, and a new timetable was agreed upon, with the final settlement agreement to be reached by March 2025.

B. Overview of the Settlement Agreement [13] The parties executed the final Settlement Agreement on March 21, 2025, subject to this Court's approval. Both parties agree that the settlement is fair, reasonable and in the best interests of the class as a whole.

[14] The key terms of the settlement include an all-inclusive payment of \$6,000,000. This all-inclusive amount includes payment for Class Members' compensation, which is dependent on the type of pension benefit that they received and the length of delay that they experienced from the date that the Class Member was released from the CAF to the date that the Class Member received their first pension payment.

[15] Class Members who were entitled to a monthly pension benefit, such as an Immediate Annuity, Annual Allowance and/or Bridge Benefit, would be compensated as follows:

\$1 to 90 Days: \$0

\$91 to 150 Days: \$400.00

\$151 to 365 Days: \$600.00

\$366 to 730 Days: \$800.00

\$Over 730 days: \$1,200.00

[16] Class Members who were entitled to a Transfer Value - a lump sum payment representing the present value of future pension benefits - would be compensated as follows:

\$1 to 180 Days: \$0

\$Over 181 Days: \$600.00

[17] The Settlement Agreement includes additional non-monetary benefits for the class including:

a) payment without proof of harm or damages;

b) a streamlined user-friendly claims process that is managed and paid for by Canada;

c) payment by direct deposit to Class Members' accounts;

d) direct notice of the Settlement Agreement to the Class provided by Canada at Canada's expense.

C. Notices to Class Members [18] In accordance with this Court's Notice Order dated April 3, 2025, and as outlined in the Settlement Agreement, Canada took the following steps between April 22, 2025 and April 30, 2025 to provide Phase I Notice of the Settlement Agreement to Class Members:

- a) Posting on the DND website;
- b) Posting to DND/Canadian Armed Forces social media channels;
- c) Posting on Veteran Affairs Canada website;
- d) Posting on MyVAC Account;
- e) Distribution of Phase I Notice in Maple Leaf;
- f) Direct mailing to Class Members by e-mail and mail;

[19] The Settlement Agreement also includes a Phase II Notice plan to advise Class Members of Settlement Agreement approval and claims process, which includes the same steps as listed above, including direct notice.

III. Issues [20] The following issues arise on these motions:

Should the Court approve the Settlement Agreement as being fair, reasonable and in the best interest of the Class?

Should the Court approve the requested fees as fair and reasonable in all the circumstances?

Should the Court approve the proposed honorarium of \$10,000 to the Representative Plaintiff?

IV. Analysis A. The Settlement Agreement (1) The test for the approval of class action settlements [21] Rule 334.29 of the Rules provides that a class proceeding settlement must be approved by the Court. The legal test to be applied is whether the proposed settlement is “fair, reasonable and in the best interests of the class as a whole” (Condon v Canada, 2018 FC 522 [Condon] at paras 17-20; Wenham v Canada (Attorney General), 2020 FC 588 [Wenham] at paras 48-51, aff’d 2020 FCA 186).

[22] While the function of the Court in reviewing a proposed class action settlement is not to reopen and enter into negotiations with litigants in the hope of improving the terms of the agreement, the Court has a responsibility to ensure that class members’ interests are not being sacrificed to the interests of class counsel (Breckon v Cermaq Canada Ltd, 2024 FC 225 [Breckon] at paras 29-30).

[23] In determining whether to approve a settlement, the Court may consider a number of factors, the weight of which will vary depending on the circumstances. The non-exhaustive list of factors includes:

- a) the terms and conditions of the settlement;
- b) the likelihood of success/recovery;
- c) the amount and nature of pre-trial activities, including investigation, assessment of evidence, production and discovery;
- d) the arm’s length bargaining and information regarding dynamics of negotiations;
- e) the recommendation of class counsel;

- f)the communications with class members;
- g)any expression of support and objections;
- h)the presence of good faith and absence of collusion;
- i)the future expense and likely duration of litigation; and
- j)any other relevant factor or circumstance.

Condon at para 19; Wenham at para 50

- [24] The Plaintiff asserts, and I agree, that the most important factors in this case are the terms of the Settlement Agreement, the likelihood of success/recovery and future expenses, inherent delays if the litigation were to continue, and the small number of objectors. Although the other factors are not explicitly addressed, I find they generally overlap with the factors discussed below, and also weigh in favour of approval of the Settlement Agreement.
- (a) Terms and Conditions of the Settlement [25] As outlined above, the key terms of the settlement include an all-inclusive payment of \$6,000,000. Class Members' settlement eligibility will be determined based on the length of delay that they experienced, calculated from the date that a Class Member was released from the CAF to the date that the Class Member received their pension benefit.
- [26] The application and distribution process will be administered directly through Canada, which provides both a user-friendly process and meaningful benefits to Class Members. Most significantly, the claims process does not require Class Members to show economic loss, hardship, emotional distress or any other form of damages in order to receive compensation. There are also several advantages to Canada administering the settlement, including significant cost savings by not engaging a third-party, quicker payments since the eligibility requirements need to be determined by reference to Canada's internal pension records, Canada already has the infrastructure in place to process the information, and Canada has the ability to provide direct notice to Class Members at addresses that they are known to use. There is also no conflict inherent in Canada, as the Defendant, administering the settlement (see e.g., *Manuge v Canada*, 2024 FC 68 at paras 38, 47, and 59).
- (b) Likelihood of Success [27] The Plaintiff asserts that the anticipated challenges facing the Plaintiff at a common issues trial are a strong factor in favour of settlement approval. He identifies four significant litigation risks in this case: (i) whether there is an enforceable contract with respect to pension administration between members of the CAF and Canada; (ii) whether the duty of care concerns "core" policy, which is not justiciable or, alternatively, whether there are other policy reasons against imposing a duty of care; (iii) whether it is possible for the Class to recover interest on the delayed payment; and (iv) whether aggregate damages are available.

- [28] I agree with Counsel for the Plaintiff that the claims raised were novel and the Plaintiff faced a great deal of uncertainty and risk regarding their success at a common issues trial. There were serious questions as to whether there was an enforceable contract between veterans and Canada (Canada (Attorney General) v Jost, 2020 FCA 212 at para 60; Knisley v Attorney General of Canada, 2024 ONSC 3528 at paras 48 to 56 rev'd on other grounds, 2025 ONCA 185 at para 16) and whether the negligence claim concerned core policy decisions for which there is no liability (R v Imperial Tobacco Canada Ltd, 2011 SCC 42 at para 90). Additionally, even if the Plaintiff was successful on proving liability, as acknowledged by the Plaintiff, the complexity and individual nature of each of the Class Members' personal circumstances and records militated against this Court awarding aggregate damages. Absent aggregate damages, individuals would have to wait until the individual issues stage to be paid compensation and would have to make their claim on financial records that were more than ten years old.
- [29] Given the late-stage settlement, Class Counsel engaged in detailed and cumbersome processes leading to the eve of trial, which included a contentious certification motion and appeal, voluminous document production that took place over three years, extensive discovery, and trial preparation. I am satisfied that Class Counsel was well-positioned to evaluate the risks of further litigation and conclude that settlement is in the best interests of the class (Cannon v Funds for Canada Foundation, 2017 ONSC 2670 at para 5).
- (c) Future Delays, including Individual Issue Claims Process [30] The Plaintiff asserts that had he continued with litigation, the potential compensation for Class Members would still be many years away. He expects it would take at least four to five years, accounting for the expectation that, given the novelty of the issues, a trial decision would take up to a year, there would be an appeal to the Federal Court of Appeal, and a further appeal to the Supreme Court of Canada. Additionally, Class Members would be required to prove damages, which would increase the length of time for Class Members to receive compensation.
- [31] Courts have recognized that immediate payment to class members is a factor in support of a settlement (Condon at para 58; Breckon at para 76). This is particularly true in this case, where Class Members can efficiently and simply apply for and receive their benefits through the streamlined application process.
- (d) The Small Number of Objections [32] After a direct and indirect notice campaign to Class Members, which is described above, approximately 0.2% of Class Members (19) filed objection forms. As noted by the Plaintiff, only 0.1% of the Class (9) actually object to the settlement, as the other objections did not disclose an objection. These objections fell under three general categories: (1) concerns over the compensation amounts; (2) concerns over Canada administering the settlement as a potential conflict of interest; and (3) a desire for a late-stage opt out.

- [33] Given this minuscule number of objections and considering the objections raised, I am of the view that the Settlement Agreement should be approved. As this Court stated in *Manuge v Canada*, 2013 FC 341 [Manuge] at paragraph 25 and Condon at paragraph 70, “it would not serve the interests of the vast majority of the Class who did not object to the settlement to send the parties back into further discussions to address the concerns of a “handful” of objectors.” The Settlement Agreement is fair, reasonable and in the best interests of the Class as a whole, even if it is less than ideal for any particular Class Member (Condon at para 69).
- (e) Concerns Over Quantum [34] I agree with the Plaintiff that the level of compensation reflects the litigation risk and the time-value of money to the class, while accounting for the advanced age of most of the Class Members. In my view, the fact that the settlement does not require Class Members to prove any form of legally compensable loss, including emotional or mental distress, which may not be compensable here, is a significant benefit not considered by the objections based on quantum. The predictability and efficiency with which Class Members will receive the award are important considerations in this case that support the fairness and reasonableness of the Settlement Agreement. The Concerns over quantum do not constitute a reason to deny approval.
- (2) Conclusion on the Settlement Agreement [35] In this case, I am satisfied that the Court was presented with sufficient evidence to allow me to make an objective, impartial and independent assessment of the fairness of the proposed Settlement Agreement (Condon at para 38).
- [36] Considering the above, I agree with the parties that the Settlement Agreement is fair, reasonable and in the best interests of the Class as a whole, and as such I hereby approve the Settlement Agreement.
- B. Class Counsel Fees and the Honorarium [37] Class Counsel request fees in the amount of \$1,910,807.77, plus HST, plus \$180,096.01 in unpaid disbursements and applicable taxes.
- [38] The requested fee is just shy of 33% contingency fee agreed to in the Retainer Fee Agreement. Under the Retainer Fee Agreement, Class Counsel are entitled to be paid an amount equal to:
- a) any disbursements not already paid to Class Counsel by the Defendant as costs, plus applicable taxes, plus interest thereon; plus
- b) 33% of the “Recovery”, which is \$6,000,000 less disbursements (\$203,508.49), plus HST.
- [39] According to the Retainer Fee Agreement, Class Counsel would be entitled to \$180,096.01 in disbursements plus \$23,412.48 in HST and \$1,912,842.20 of the Recovery, plus \$248,669.49 in HST.

- [40] The jurisprudence has held that a percentage-based fee contained in a retainer agreement is presumed to be fair and should only be rebutted or reduced “in clear cases based on principled reasons” (Condon at para 85, citing *Cannon v Funds for Canada Foundation*, 2013 ONSC 7686 at para 8).
- (1) The test for the approval of class counsel fees [41] Rule 334.4 of the Rules provides that all payments to counsel flowing from a class proceeding must be approved by the Court. The overarching test applicable to assessing class counsel fees is that they have to be “fair and reasonable in all of the circumstances” (Condon at para 81; Manuge at para 28).
- [42] The principal factors the Plaintiff asserts this Court should consider in assessing whether the counsel fees are reasonable are: (i) the results achieved for class members; (ii) the risks undertaken by class counsel; and (iii) the legal and factual complexities of the case (citing to Condon at para 83). Other factors the Court may consider include: the importance of the issues to the class; the skill and competence demonstrated by class counsel throughout the case; ability of the class to pay and the class's expectation of legal fees; the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation; and fees in similar cases (*Breckon* at para 127; *Moushoom v Canada (Attorney General)*, 2023 FC 1739 at paras 83-84).
- (a) The Results Achieved [43] The terms of the Settlement Agreement have been outlined above. It includes an all-inclusive payment of \$6,000,000, which will provide compensation to Class Members according to their pension type and the delay that they experienced. The significant advantages of this agreement include the non-monetary benefits, including the streamlined distribution process. Additionally, the settlement has a mechanism to adjust Class Members' individual payments if settlement funds remain available after all individual payments are assessed.
- (b) The Risks and Degree of Responsibility Assumed by Class Counsel [44] As described above, this was a high risk and complex case. The liability claims were novel and difficult to prove, and the damages claim was similarly complex, likely requiring individual damage assessments at the end of the trial.
- [45] For over eight years, Class Counsel bore all the risks of litigation without any guarantee of payment. Class Counsel pursued this action on a contingency fee basis, and accepted responsibility for all expenses and costs, without pursuing third-party litigation funding or partnering with any other firm as part of a consortium to prosecute the suit. As of May 15, 2025, Class Counsel incurred \$2,561,699.50 in unbilled fees, \$333,020.94 in HST, and \$203,508.49 in unbilled disbursements and taxes, for a total of \$3,098,228.93.
- (c) Expectations of the Class [46] The amount of fees sought by Class Counsel were disclosed as part of the Notice Plan implemented by the parties in April 2025. No objections to the legal fees sought have been received.

- [47] The Representative Plaintiff also provided evidence that he was aware of the contingency fee rate in the retainer agreement and that he believes the fees Class Counsel are seeking are fair in all the circumstances.
- (d) Importance to the Class [48] Evidence provided showed that the Class consists of upwards of 9,610 veterans. Without this class proceeding and counsel's willingness to prosecute this action on a contingency basis, these class members would have had no meaningful way to obtain compensation.
- (e) Class Counsel's Experience [49] Class Counsel have been involved in dozens of class actions including in employment and employee benefits claims. They have a breadth of experience at all stages of class action procedure, from certification to trial to settlement.
- (f) Opportunity Costs to Class Counsel [50] Class counsel have expended significant time and resources in pursuing this litigation over the eight years. As of May 15, 2025, Class Counsel have spent 4,501.60 hours of lawyer, student and clerk time, with a value of \$2,561,699.50.
- (g) Fees in Similar Cases [51] The requested fee, which falls just short of the 33% contingency fee, falls into the high end of fees sought by class counsel (*Lin v Airbnb, Inc*, 2021 FC 1260 at para 102). The British Columbia Supreme Court found that that the typical range for contingency fees has been recently described as being "15% to 33% of the award or settlement" in British Columbia (*Lin* at para 102, citing *Kett v Kobe Steel, Ltd*, 2020 BCSC 1977 at para 54). Although the requested fee is within the "high end" of what is considered reasonable, in the circumstances of this case, particularly with respect to the risk and uncertainty of the Plaintiff's claims at trial, it is reasonable.
- (2) Conclusion [52] The legal fees sought by Class Counsel are consistent with the Retainer Fee Agreement and are fair and reasonable in light of the circumstances of this case, which are highlighted above.

C. The Honorarium [53] Class Counsel also request an honorarium in the amount of \$10,000 to the Representative Plaintiff, Mr. Douglas Jost, for his contribution to the Class Members' pursuit of access to justice.

- [54] Honoraria to representative plaintiffs are awarded sparingly and requires "exceptional contribution that has resulted in success for the class" (*Breckon* at para 168). In determining whether the circumstances are exceptional, the Court may consider several factors, including: (i) active involvement in the initiation of the litigation and retainer of counsel; (ii) exposure to a real risk of costs; (iii) significant personal hardship or inconvenience in connection with the prosecution of the litigation; (iv) time spent and activities undertaken in advancing the litigation; (v) communication and interaction with other class members; and (vi) participation at various stages in the litigation, including discovery, settlement negotiations and trial (*Breckon* at para 169, citing *Shah v LG Chem Ltd*, 2021 ONSC 396 at para 50).

- [55] This Court has recently supported the nine reasons outlined by Justice Perell in the matter of *Doucet v The Royal Winnipeg Ballet*, 2022 ONSC 976 at paragraph 61 that culminate in the conclusion that, as a matter of legal principle, honorariums should no longer be granted in class proceedings:
1. Awarding a litigant on a quantum meruit basis for active and necessary assistance in the preparation or presentation of a case is contrary to the policy of the administration of justice that represented litigants are not paid for providing legal services. Lawyers not litigants are paid for providing legal services.
 2. A fortiori awarding a represented litigant on a quantum meruit basis for active and necessary assistance in the preparation or presentation of a case is contrary to the policy of the administration of justice that self-represented litigants are not paid for providing legal services. Lawyers not litigants are paid for providing legal services.
 3. Awarding a litigant for such matters as being a witness on examinations for discovery or for trial is for obvious reasons contrary to the administration of justice.
 4. In a class action regime based on entrepreneurial Class Counsel, the major responsibility of a Representative Plaintiff is to oversee and instruct Class Counsel on such matters as settling the action. The court relies on the Representative Plaintiff to give instructions that are not tainted by the self-interest of the Representative Plaintiff receiving benefits not received by the Class Members he or she represents.
 5. Awarding a Representative Plaintiff a portion of the funds that belong to the Class Members creates a conflict of interest. Class Members should have no reason to believe that their representative may be motivated by self-interest and personal gain in giving instructions to Class Counsel to negotiate and reach a settlement.
 6. Practically speaking, there is no means to testing the genuineness and the value of the Representative Plaintiff's or Class Member's contribution. Class Counsel have no reason not to ask for the stipend for their client being paid by the class members. The affidavits in support of the request have become pro forma. There is no cross-examination. There is no one to test the truth of the praise of the Representative Plaintiff. Class Members may not wish to appear to be ungrateful and ungenerous and it is disturbing and sometimes a revictimization for the court to scrutinize and doubt the evidence of the apparently brave and resolute Representative Plaintiff.
 7. The practice of awarding an honourarium for being a Representative Plaintiff in a class action is tawdry. Using the immediate case as an example, awarding Class Counsel \$2.25 million of the class member's compensation for prosecuting the action, makes repugnant awarding Ms. Doucet \$30,000 of the class member's compensation for her contribution to prosecuting the action. The tawdriness of the practice of awarding a honourarium dishonours more than honours the bravery and contribution of the Representative Plaintiff.

8. As revealed by the unprecedented request made in the immediate case, the practice of awarding a honourarium to a Representative Plaintiff in one case is to create a repugnant competition and grading of the contribution of the Representative Plaintiff in other class actions.
 9. The practice of awarding a honourarium in one case may be an insult to Representative Plaintiffs in other cases where lesser awards were made. For instance, in the immediate case, I cannot rationalize awarding Ms. Doucet \$30,000 for her inestimably valuable contribution to this institutional abuse class action with the \$10,000 that was awarded to the Representative Plaintiffs who brought access to justice to inmates in federal penitentiaries and who themselves experienced the torture of solitary confinement. I cannot rationalize awarding any honourarium at all when I recall that the Representative Plaintiff in the Indian Residential Schools institutional abuse class action did not ask for a honourarium and he did not even make a personal claim to the settlement fund. Having to put a price tag to be paid by class members on heroism is repugnant.
- [56] Like Justice Gascon in Breckon at paragraphs 177 to 178, I also agree with those comments outlined above. Generally, honorariums should not be granted for work that is expected of representative plaintiffs. However, where a plaintiff has gone above and beyond in their contributions on behalf of the class, amounting to exceptional circumstances in a particular case, an honorarium may be justified.
- [57] As Class Counsel points out, Mr. Jost was a public advocate for Class Members before he started this class action, he retained Class Counsel, and he continued to advocate for the class for over eight years. He made significant contributions to the class action, having carried out real and significant work, including but not limited to: (i) preparing affidavits for certification; (ii) preparing for and attending cross-examinations on the affidavit in support of certification; (iii) preparing for and attending examinations for discovery in support of the trial; (iv) strategizing with class counsel from time to time over the years, including over settlement; and (v) preparing for and taking the case to the doorstep of trial, as a central witness.
- [58] I agree with Class Counsel that Mr. Jost went beyond “merely doing [his] job as class representative.” Additionally, he endured personal hardship – including criticism in the media and through cross-examination and discovery – and took on those burdens so hundreds of other class members did not have to do it. I do not hesitate to find that his contributions were exceptional.
- [59] Given the above, I find it is appropriate and fair to award Mr. Jost an honorarium in the amount of \$10,000.

V. Conclusion [60] The Plaintiff’s two motions are granted.

[61] The Settlement Agreement is approved as I find it fair, reasonable, and in the best interests of the class as a whole. The requested Class Counsel Fees and the Honorarium are also fair and reasonable and are approved.

ORDER in T-972-17

THIS COURT ORDERS that:

For the purposes of the settlement, the following definitions shall apply:

“Administrator” means Canada;

“Annual Allowance” means “annual allowance” as defined in the Canadian Forces Superannuation Act, RSC 1985, c C-17, and its associated regulations;

“Approval Date” means the date that this Order is executed;

“Approval Orders” means this Order and the Order approving counsel fees in this matter;

“Bridge Benefit” means “bridge benefit” as defined in the Canadian Forces Superannuation Act, RSC 1985, c C-17, and its associated regulations;

“Canada” or “Government of Canada” means His Majesty the King in Right of Canada, and includes the Department of National Defence and the Canadian Armed Forces;

“Certification Order” means the order of the Court dated April 16, 2021 in this matter;

“Claimant” means a person who completes a Claim Form, or on whose behalf a Claim Form is submitted;

“Claim Form” means the form which must be completed to apply for an Individual Payment, the content of which is attached as Schedule “B” to the Settlement Agreement or as amended by agreement of the Parties;

“Class Action” means this class proceeding, Court File No. T-972-17;

“Class Counsel” means Koskie Minsky LLP;

“Class Members” means all persons who meet the definition set out in paragraph 3 below;

“Immediate Annuity” means “immediate annuity” as defined in the Canadian Forces Superannuation Act, RSC 1985, c C-17, and its associated regulations;

“Implementation Date” means the latest of:

a) forty-five (45) days from the Approval Order; and

b) thirty (30) days from the last day on which a Class Member may appeal or seek leave to appeal the Approval Order; and

c)thirty (30) days from the date of the final determination of any appeal brought in relation to the Approval Order.

“Opt Out” means the delivery of a valid opt out form prior to the expiry of the Opt Out Period;

“Opt Out Period” means the period that expired on August 14, 2021 pursuant to the Certification Order;

“Parties” means the Plaintiff and Canada;

“Releasees” means individually and collectively, Canada, all current and former Ministers, employees, departments, Crown agents, agencies, staff, Crown servants and members of the CAF;

“Releasor(s)” means each Class Member, deceased Class Member, Estate Executor, and their respective legal representatives, successors, heirs and assigns;

“Settlement Agreement” means the final Settlement Agreement, including the Schedules listed at Section 1.06 of the Agreement, executed between the parties on March 21, 2025 and attached as an Appendix to this Order;

“Transfer Value” means “transfer value” as defined in the Canadian Forces Superannuation Act, RSC 1985, c C-17, and its associated regulations.

All applicable parties have adhered to and acted in accordance with the Notice Order dated April 3, 2025 and the procedures provided in the Notice Order have constituted good and sufficient notice of the hearing of this motion.

CLASS DEFINITION

The Class includes all individuals who did not opt out of the Class Action during the Opt Out Period and who:

- a)served in the Canadian Armed Forces – Reserve Force;
- b)released from the Canadian Armed Forces between March 1, 2007 and October 31, 2017;
- c)were entitled to receive an Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit under the Regular Force Pension Plan or the Reserve Force Pension Plan; and
- d)did not receive payment of the Immediate Annuity, Transfer Value, Annual Allowance and/or Bridge Benefit for more than 60 days from the date of release.

There shall be no further provision for Class Members to opt out of the Class Action.

SETTLEMENT APPROVAL

The settlement of this Class Action on the terms set out in the Settlement Agreement attached as an Appendix to this Order, including the Schedules, and as expressly incorporated by reference into this Order, is fair and reasonable and in the best interests of Class Members as a whole, and is approved.

The Settlement Agreement and this Order are binding on the Parties and on every Class Member, including persons under a disability, and are binding whether or not such Class Member claims or receives compensation.

DISMISSAL AND RELEASE

The Class Action, and the claims of the Class Members and the Class as a whole, are dismissed against Canada, without costs and with prejudice and such dismissal shall be a defence and absolute bar to any subsequent action against Canada in respect of any of the claims or any aspect of the claims made in the Class Action and relating to the subject matter thereof, and are released against the Releasees in accordance with Section 10 of the Settlement Agreement, in particular as follows:

(a) the Releasor(s) fully, finally and forever release and discharge the Releasees from any and all actions, suits, proceedings, causes of action, common law, Quebec civil law and statutory liabilities, equitable obligations, contracts, claims, losses, costs, grievances and complaints and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any Releasor may ever have had, may now have, or may in the future have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise with respect to or in relation to any aspect of the Class Action and this release includes any such claim made or that could have been made in any proceeding including the Class Action whether asserted directly by the Releasor(s) or by any other person, group or legal entity on behalf of or as representative of the Releasor(s);

(b) The Releasor(s) agree that if they make any claim or demand or take any action or proceedings against another person or persons in which any claim could arise against a Releasee for damages or contribution or indemnity and/or other relief over under the provisions of the Negligence Act, R.S.O. 1990, c. N-3, or its counterpart in other jurisdictions in relation to the Class Action, then the Releasor(s) will expressly limit their claims to exclude any portion of responsibility of the Releasees;

(c) Canada's obligations and liabilities under the Settlement Agreement constitute the consideration for the releases and other matters referred to in the Settlement Agreement and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Releasor(s) are limited to the benefits provided and compensation payable pursuant to the Settlement Agreement, in whole or in part, as their only recourse on account of such claims.

This Order, including the releases referred to in paragraph 7 above, and the Settlement Agreement, are binding upon all Class Members, including those persons who are under a disability.

ADMINISTRATION

Canada shall administer the Claims process in accordance with the Settlement Agreement. The costs of administration shall be borne by Canada.

No person may bring any action or take any proceeding against the Administrator, or any employees, servants, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the Settlement Agreement, the Notice Plan, the administration of the Settlement Agreement or the implementation of this Order, except with leave of the Court on notice to all affected parties.

NOTICE

The Notice Plan provided for in Section 3.01 of the Settlement Agreement and in the forms described in Section 3.02 and Schedule "C" of the Settlement Agreement satisfy the requirements of the Federal Courts Rules, and constitute the best notice practicable under the circumstances.

Within forty-five (45) days of this Order, notice shall be given of this Order, the approval of the Settlement Agreement and the Claims Period, in accordance with the Notice Plan attached as Schedule "C" to the Settlement Agreement.

Notice shall be given in the forms attached as Schedule "F" to the Settlement Agreement subject to the right of the parties to make non-material amendments as may be necessary or appropriate.

Subject to the exceptions identified in Section 3.04 of the Settlement Agreement, Canada shall pay the reasonable costs associated with the Notice Plan.

CLASS COUNSEL FEES AND NOTICE FEES

The total amount payable out of the Settlement Amount to Class Counsel in respect of legal fees is hereby set at \$1,910,807.77 plus \$248,405.01 for HST, which is hereby set at the rate of harmonized sales tax applicable in the province of Ontario. No other consumption taxes shall apply. The sum total of legal fees and taxes on same is \$2,159,212.78.

The total amount payable out of the Settlement Amount to Class Counsel in respect of disbursements, in addition to legal fees payable pursuant to paragraph 1, above, is hereby set at \$180,096.01 plus \$23,412.48 for HST, which is hereby set at the rate of harmonized sales tax applicable in the province of Ontario. No other consumption taxes shall apply. The sum total for disbursements and taxes on same is \$203,508.49.

The Plaintiff, Douglas Jost, shall receive an honourarium of \$10,000.00 to be paid out of the Settlement Amount.

The Defendant shall make the payments listed at paragraphs 1, 2 and 3, above, to Class Counsel within sixty (60) days of the Implementation Date.

There shall be no order as to costs regarding this motion.

CONTINUING JURISDICTION AND REPORTING

The Settlement Agreement shall be implemented in accordance with this Order and further orders of this Court.

This Court, without in any way affecting the finality of this Order, shall have exclusive and continuing jurisdiction over this Class Action, the Plaintiff, Class Members and the Defendant, for the limited purpose of implementing and enforcing the Settlement Agreement and this Order.

This Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this Order.

“Michael D. Manson”

Judge

ANNEX A

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-972-17

STYLE OF CAUSE:

DOUGLAS JOST v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

June 18, 2025

ORDER AND REASONS:

MANSON J.

DATED:

July 4, 2025

APPEARANCES:

Celeste Poltak

Adam Tanel

For The Plaintiff

Laura Tausky

Ani Mamikon

Uyên Tran

For The Defendant

SOLICITORS OF RECORD:

Koskie Minsky

Barristers and Solicitors

Toronto, Ontario

For The Plaintiff

Attorney General of Canada

Toronto, Ontario

For The Defendant

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CASE PAGE <https://chat.esheria.ai/case-law/canada/jost-v-canada-attorney-general-2025>

Prepared on 24 October 2026 · Esheria