

Court File Number: T-889-08

**FEDERAL COURT**

**PROPOSED CLASS ACTION**

**BETWEEN:**

**ESTATE OF A. GERARD BUOTE and DAVID WHITE**

**PLAINTIFFS**

**- and -**

**HER MAJESTY THE QUEEN**

**DEFENDANT**

**AFFIDAVIT OF DAVID WHITE**

I, David White, of the Bridgewater, Nova Scotia, hereby make oath and say as follows:

1. I am the plaintiff in this proposed class action. As such, I have personal knowledge of the facts deposed to in this Affidavit except where stated to be made on information and belief, in which case I disclose the source of my information and believe those facts to be true.

**My Personal Background**

- 2.. I became an RCMP officer in February 1973.
3. For much of my almost 30 year career in the RCMP, I was required to pay premiums into a long term disability plan ("LTD Plan").

4. I understood that the purpose of the LTD Plan was to provide me with income replacement if I became unable to serve, and therefore unable to receive my usual salary.
5. In the mid 1990's, a Veterans Review and Appeal Board in St. John's NL awarded me a Veterans Disability Pension for Hearing Loss in one ear. I continued to work as an RCMP officer and, effective October 27, 2000 when Bill C-12 became law, I began to receive my Disability Pension from Veterans Affairs in addition to my regular RCMP salary.
6. In May 2001, I was serving as a constable with the RCMP detachment located in Bridgewater, Nova Scotia. I was on duty and investigating a report of a break-in at a private residence. Unbeknownst to me, the homeowner had modified the alarm so that it would be extremely loud. As I approached the home, this extremely loud alarm sounded.
7. My exposure to this alarm has caused me to suffer from hearing loss, tinnitus and hyperacusis. Tinnitus is a high-pitched ringing sound in both of my ears. Hyperacusis is a severe sensitivity to sound, including everyday sounds such as a television, ringing phone or lawnmower.
8. On July 2, 2002, the RCMP issued a Notice of Medical Discharge to me pursuant to subsection 20(9) of Royal Canadian Mounted Police Regulations, 1988. In its Notice of Medical Discharge, the RCMP ordered that I was immediately discharged from the RCMP due to my physical disability. This Notice of Medical Discharge is attached hereto as **Exhibit "A"**.
9. The RCMP stated that I was no longer able to perform my duties under the RCMP Act and I could not be accommodated elsewhere in the RCMP. The RCMP relied on medical information that stated that, due to my limitations, I could not work in the presence of loud noise, could not rely upon hearing to determine the location of a sound, and could not drive a police vehicle.
10. As I was unable to work, I applied for long term disability benefits under the LTD Plan. I was determined to be "totally disabled" as defined in the LTD Plan. I continue to be totally disabled as defined in the LTD Plan.

11. I also applied for a VAC Disability Pension. On August 8, 2002, my disability was initially assessed at 10% under the Pension Act. I made numerous appeals to Veterans Affairs Canada and the Veteran Review and Appeal Board to increase the assessment of my disability. As the result of my appeals, the assessment of my disability has increased as follows:

Date of change of assessment	Assessment of my disability
August 8, 2002	Initially assessed at 10%
August 17, 2004	Increased to 15%
March 3, 2005	Increased to 25%
June 14, 2007	Increased to 28%
August 12, 2009	Increased to 38%
August 2, 2012	Increased to 42%

12. I have not seen any financial benefit provided for my pain and suffering from the VAC Disability Pension. All amounts that I have received for my pain and suffering under the VAC Disability Pension have been offset from my long term disability payment ("Offset").
13. I have not seen any financial benefit from the recognition that my disabilities merited an increased assessment. Each time that my disability assessment increased, I was provided a retroactive payment to properly recognize my pain and suffering, but that retroactive payment promptly had to be handed over to the Defendant purportedly under the LTD Plan. An October 26, 2011 summary of my increased disability assessments and resulting Pension Act Offset is attached as **Exhibit "B"**.
14. As a result of the Pension Act Offset, I receive only \$68.49 in monthly income replacement under an insurance policy that I have paid premiums for throughout my almost 30 year career. Attached as **Exhibit "C"** is a copy of my January 27, 2014 Explanation of Benefits.
15. I have always thought that the Pension Act Offset was unfair because the VAC Disability Pension is not for my lost income, but rather to compensate me for my pain and suffering, and the corresponding fact that I cannot bring an action for my loss. I believe

that the VAC Disability Pension and the LTD Plan's long term disability payments are "apples and oranges".

### **My Involvement as the Proposed Representative Plaintiff**

16. I became aware of a class action on this issue started by Gerard Buote in 2008. I was pleased that someone had taken the step to challenge the Pension Act Offset, which I felt was unfair. I contacted McInnes Cooper to be added to the Class database. I received periodic email updates from Class Counsel.
17. On April 23, 2012, I was contacted by Daniel Wallace of McInnes Cooper, who advised me that he was looking for class members who were willing to act as representative plaintiff as Mr. Buote had passed away. We scheduled a meeting for May 4, 2012 to discuss this possibility.
18. On May 1, 2012, the Federal Court released its decision in the similar case of *Manuge v. Her Majesty the Queen*.
19. I met with Mr. Wallace on May 4, 2012. He discussed the role and responsibilities of representative plaintiff with me and my wife, Susan White. I informed Mr. Wallace that I was prepared to act as a representative plaintiff.
20. I attach as **Exhibit "D"** to this my Affidavit my retainer agreement and contingency fee agreement with McInnes Cooper concerning fees and disbursements. I signed these agreements on May 9, 2012. I have not had to pay any legal fees or out of pocket expenses in regard to this action.
21. Since becoming the proposed representative plaintiff, I have worked closely with Class Counsel and I have been thoroughly impressed by Class Counsel's determined legal and advocacy efforts.
22. Class Counsel's advocacy on this issue has not been confined to the litigation process. McInnes Cooper retained the public relations firm of MT&L to advocate on this issue.
23. I advised Class Counsel to pursue this case as quickly as reasonably possible, and I believe that they did.

24. Class Counsel pushed for media coverage of the RCMP Pension Act Offset. My story, and the story of the Class, received positive national coverage from the CBC in January 2013 and the Canadian Press in July 2013.
25. Following the Court's May 1, 2012 decision in *Manuge*, I had hoped that this case would be included in the *Manuge* negotiations and settled on similar terms.
26. In the summer of 2012, Mr. Wallace advised me that the Crown would not discuss this case either on its own or as part of *Manuge* settlement negotiations.
27. On October 3, 2012, Class Counsel filed a notice of motion to certify this action. I swore an affidavit in support of that motion.
28. I was cross examined on the affidavit by Defendant's counsel on February 13, 2013.
29. On February 14 and 15, 2013, I attended the *Manuge* fee and settlement hearing to get a better understanding of the class action process, and the results achieved for *Manuge* class members.

### **Settlement Negotiations and Agreement**

30. In April 2013, Mr. Wallace informed me that after a number of delays and adjournments, the Crown was now willing to enter into potential settlement negotiations. These negotiations continued throughout the summer and fall of 2013. During this time, I was in constant communication with Class Counsel to instruct and advise them.
31. I felt that the *Manuge* class members received a fair settlement and I instructed Class Counsel to try to obtain a similar settlement.
32. During the negotiation process, Class Counsel went through the proposed settlement agreement and explained each term of the settlement agreement to me. I believe this settlement is a very good result for the Class.
33. In recommending this settlement I considered the following:
  - (a) The Court's decision on the contractual interpretation issues that drove the *Manuge* settlement was not directly applicable to our case;

- (b) There was a real risk that we could lose and the Defendant had advised Class Counsel that any settlement deal would have to reflect that risk;
  - (c) The six year limitation period could prevent claims before June 6, 2002. As I was medically released in July 2002, I informed Class Counsel that I was uneasy about recommending a settlement that treated post-July 2002 released members (like me) better than pre-July 2002 released members;
  - (d) The ongoing application of the Pension Act Offset for newly released Class Members; and
  - (e) The poor health and financial circumstances of some Class Members.
34. I believe that Class Counsel has achieved a result that recognizes the needs of RCMP veterans and effectively resolves the claims at issue in this litigation, while seeing funds flowing to Class Members in a timely fashion.
35. I believe that the proposed settlement agreement is fair and reasonable for the Class, particularly given the risks and delays of continued litigation. I believe that it is in everyone's best interests to fully resolve this matter.
36. I am particularly pleased that the recovery period will extend to the start of the Pension Act Offset so no one's claim will be barred.
37. I am also pleased that the Pension Act Offset will stop once and for all if the settlement is approved. This will provide financial security to Class Members currently in receipt of benefits and current RCMP members who may be medically released in the future.
38. As an RCMP officer, I had a lot of experience with the Court system. I understand that it can be slow and have unpredictable results. I also understand that the poor health and financial difficulties of many Class Members meant that it was important to get a fair resolution sooner rather than later.

### **The Proposed Honorarium**

39. Since agreeing to be the proposed representative plaintiff, I performed the following work, which I felt was necessary to advance the interests of the class as a whole:
- a. Talking with Class Members and listening to their stories;


- b. Talking to veterans organizations, such as the RCMP Veterans Association and the Royal Canadian Legion;
  - c. Handling press interviews and inquiries; and
  - d. Advising and strategizing with Class Counsel.
40. I will continue to act as a representative plaintiff, as necessary, if this settlement is approved.
41. At no time did I ask for compensation for my efforts. At no time prior to the preparation of this motion did Class Counsel suggest to me that they would be making a special request to compensate me for my efforts. I understand that the proposed honorarium will come out of any approved Class Counsel fees and not from the Class Members. I appreciate the gesture, but certainly do not demand or insist upon it.

#### **Class Counsel Fees**

42. When I first learned of Mr. Buote's action, I understood that Mr. Buote's agreement with Class Counsel provided that legal fees could be 30% of any recovery. I believed that 30% was reasonable compensation for the risks that were being undertaken by Class Counsel. I appreciated that Class Counsel took the case on a contingency basis as I could not have afforded to pay a lawyer on an hourly basis, particularly if the action was unsuccessful.
43. When I agreed to become the proposed representative plaintiff in May 2012, I still believed that 30% was reasonable and I signed a Retainer Agreement that provided that fee.
44. Class Counsel has advised me that they will only be requesting fees of 8% from retroactive amounts and interest and 0% from future payments.
45. I am informed by Defendant's Counsel and do verily believe that the retroactive payments to April 30, 2014 are \$30.6 million, interest to October 31, 2014 is \$9.1 million and that the net present value of future benefits to the Class is \$30.3 million. As a result, the requested fees are approximately 4.5% of the total benefits that the Class will receive.

46. I support Class Counsel's fee request. These fees are far below the 30% that I originally agreed to. I think the proposed approach to fees is fair and reasonable given the risks Class Counsel took on in advancing the case, the results they have achieved, and the excellent work they have done throughout. I also appreciate that it is consistent with the Court's approved percentage in *Manuge*.
47. I am pleased that Class Members, and RCMP members released in the future, will not see any deduction for legal fees on future payments.
48. I estimate that my principal refund will be approximately \$160,000 plus significant interest of approximately \$32,000. I will receive monthly payments increased by \$1,161 per month until I turn 65 in June 2017. I consider it to be more than fair and reasonable to pay just approximately \$15,500 for legal fees necessary to receive these significant benefits.
49. I have received very positive feedback from Class Members. They informed me that they are hurting and that this will greatly improve their quality of life.
50. I swear to this affidavit in support of this motion seeking an order certifying this action as a class action and for no other or improper purpose.

**SWORN BEFORE ME** at Halifax,  
Nova Scotia this 30<sup>th</sup> day of April,  
2014, before me:

  
A Barrister of the Supreme Court  
of Nova Scotia

**DANIEL WALLACE**  
A Barrister of the Supreme  
Court of Nova Scotia

  
**DAVID C. WHITE**



**TAB A**

Court File No. T-889-08

The following is Exhibit "A" referred  
to in the Affidavit of DAVID WHITE sworn  
before me this 30<sup>th</sup> day of April, A.D. 2014

Daniel Wallace

A Barrister of the Supreme Court  
of Nova Scotia

**DANIEL WALLACE**  
A Barrister of the Supreme  
Court of Nova Scotia

Protected "A"

) IN THE MATTER OF THE ROYAL CANADIAN MOUNTED  
 ) POLICE ACT, R.S.C. 1985, CHAPTER R-10 AS AMENDED  
 ) BY 33-34-35, ELIZABETH II, CHAPTER 11  
 )  
 CANADA ) - and -  
 )  
 ) IN THE MATTER OF REG. NO. 34112, CST. D.C. WHITE

**NOTICE OF MEDICAL DISCHARGE**  
**PURSUANT TO SUBSECTION 20(9) OF THE**  
**ROYAL CANADIAN MOUNTED POLICE REGULATIONS, 1988**

TAKE NOTICE that I, Assistant Commissioner D.L. Bishop, the Commanding Officer of "H" Division, and the Appropriate Officer, pursuant to subsection 20 (9) of the RCMP Regulations, 1988, have decided that you shall be discharged from the Royal Canadian Mounted Police for reason of physical disability. In reaching my decision I have considered the following:

- Notice of Intent to Discharge, signed by Sgt. C.C. Harnes, the Designated Officer, dated the 15<sup>th</sup> day of November, 2001;
- Medical File Review conducted by Dr. M.-S. Moore, Health Services Officer for "H" Division, dated the 5<sup>th</sup> day of October, 2001; and
- The Medical Board Report, dated 19<sup>th</sup> day of April, 2002 signed by Dr. M.-S. Ross, Chairperson is attached as Appendix "A" and outlines your current limitations and the specific tasks that you are unable to perform in your duties.

AND FURTHER TAKE NOTICE that the reasons for my decision are that your disability has impaired your ability to perform your duties under the R.C.M.P. Act in a manner fitted to the requirements of your position, and that the limitations and occupational restrictions resulting from your condition are such that you are not able to be accommodated elsewhere in the Force, based on the following particulars which were provided by the Health Services Officer in the Medical File Review, that:

- A. Your physical limitations are such that as a consequence you have difficulty hearing, especially in the presence of background noise.
- B. As a result of these limitations you have the following duty restrictions:
  - A. No working in the presence of loud noise;
  - B. No relying upon hearing to determine the location of a sound;
  - C. No operational driving of a police vehicle.

MAR 09 2005

000206

-2-

Protected "A"

- C. You are therefore restricted from performing the following tasks which are further described in the current Integrated Task Bank of duties for a General Duty :

Patrol (2.1, 2.2, 2.4 - 2.8, 2.11, 2.12)  
Enhance Highway Safety (7.2 - 7.5)

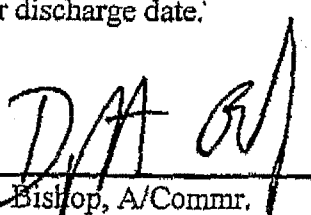
- D: Prognosis: The physical condition from which this member is suffering is of a chronic nature with little likelihood of sufficient improvement to enable him to return to unrestricted operational duties in the future.

**THEREFORE FURTHER TAKE NOTICE** that I hereby order you, **REGIMENTAL NUMBER 34112, Constable D.C. WHITE**, discharged from the Royal Canadian Mounted Police for reason of physical disability effective immediately, subject to subsection 22(a) of the Royal Canadian Mounted Police Regulations, 1988.

**AND FURTHER TAKE NOTICE THAT** pursuant to subsection 22(a) of the RCMP Regulations, 1988, you may grieve this decision under PART III of the RCMP Act.

**AND FURTHER TAKE NOTICE THAT** you may be represented and/or assisted in the presentation of a grievance relating to your medical discharge pursuant to subsection 19(a) of the Royal Canadian Mounted Police Regulations, 1988 by a member of the Member Representative Unit as per subsection 1(d) of the *Commissioner's Standing Orders (Representation), 1997 (AM XII.9.C.)*.

**AND FINALLY TAKE NOTICE** that your grievance must be presented within the time limits set out in subsection 31(2) of the RCMP Act and will not be extended as a result of the extension of your discharge date.

  
D.L. Bishop, A/Commr.  
Appropriate Officer  
Commanding Officer, "H" Division

Dated at Halifax, in the  
Province of Nova Scotia  
this 2nd day of July, 2002

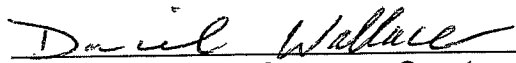
Service Acknowledged: 

Date: 2002/5/11/08

**TAB B**

Court File No. T-889-08

The following is Exhibit "B" referred  
to in the Affidavit of DAVID WHITE sworn  
before me this 30<sup>th</sup> day of April, A.D. 2014 .

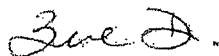
  
A Barrister of the Supreme Court  
of Nova Scotia

DANIEL WALLACE  
A Barrister of the Supreme  
Court of Nova Scotia

Mr David White  
October 26, 2011  
Page 2

If you require further information, please contact our office at 1-800-283-5375.

Sincerely,



Eve D.  
Disability Benefits Administrator

Copy: Ryan Dodds  
Pay and Benefits Clerk

REF: 253355281-111187797 / White01794L

**TAB C**



Court File No. T-889-08

The following is Exhibit "C" referred  
to in the Affidavit of DAVID WHITE sworn  
before me this 30<sup>th</sup> day of April, A.D. 2014



A Barrister of the Supreme Court  
of Nova Scotia

DANIEL WALLACE  
A Barrister of the Supreme  
Court of Nova Scotia

**You and your family deserve  
a great service experience.**

THE  
**Great-West Life**  
ASSURANCE COMPANY

We are committed to delivering that experience to you – every time.

www.greatwestlife.com

DAVID WHITE  
50 PINECREST BLVD.  
BRIDGEWATER, NS.  
B4V 3R4

YOUR GROUP COVERAGE WITH  
R.C.M.P.  
DIVISION 1  
YOUR PLAN NUMBER 24892  
YOUR I.D. NUMBER E000034112

**CLAIMANT'S EXPLANATION OF BENEFITS**

**JANUARY 27, 2014**

YOUR LONG TERM DISABILITY BENEFIT FOR THE PERIOD JANUARY 1-31, 2014 IS:

\$ 4,201.11 PER MONTH FOR 1 MONTH	\$ 4,201.11
LESS OTHER DISABILITY INCOME FOR THE PERIOD JANUARY 1-31, 2014	- 1,161.08
LESS RETIREMENT INCOME FOR THE PERIOD JANUARY 1-31, 2014	- 2,971.54
NET BENEFIT	\$ 68.49
PAYMENT	\$ 68.49

PAYMENT NO. 62791690 FOR \$ 68.49 PAID TO YOU

PLEASE KEEP ALL INFORMATION CONTAINED HERE SECURE. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE GREAT-WEST LIFE ASSURANCE COMPANY, OTTAWA DISABILITY MGMT SVCS, 11 HOLLAND AVENUE, SUITE 300, OTTAWA, ON., K1Y 4W4, OR CALL 613-761-3940 (TOLL FREE 1-800-283-5375).

**DIRECT DEPOSIT ADVICE**

THE AMOUNT \$68.49 WILL BE DEPOSITED DIRECTLY INTO YOUR ACCOUNT 727XXXX,

CIBC - EAST SIDE PLAZA

IF ANY OF THE ABOVE BANKING INFORMATION HAS CHANGED, PLEASE ADVISE GREAT-WEST LIFE. WITH NORMAL BANK CLEARING PROCEDURES THE DEPOSIT WILL APPEAR IN THIS ACCOUNT WITHIN THE NEXT FEW DAYS.

**NOT NEGOTIABLE**

**NON NEGOCIABLE**

**TAB D**

Court File No. T-889-08

The following is Exhibit "D" referred  
to in the Affidavit of DAVID WHITE sworn  
before me this 30<sup>th</sup> day of April, A.D. 2014

*Daniel Wallace*  
A Barrister of the Supreme Court  
of Nova Scotia

DANIEL WALLACE  
A Barrister of the Supreme  
Court of Nova Scotia



## MEMORANDUM

TO: Daniel Wallace

FROM: David White

DATE: May 7, 2012

RE: David White v. Her Majesty the Queen

File No.: PF-113

---

 RETAINER AGREEMENT – CLASS ACTION

I, David White, hereby retain and employ the law firm of McInnes Cooper as my solicitors and hereby authorize them to institute, certify and pursue a Class Action pursuant to the Federal Courts Rules under the authority of the *Federal Courts Act*, naming myself as representative Plaintiff on behalf of a class of persons who were in receipt of long term disability benefits sponsored by the Royal Canadian Mounted Police under plan number 24892 as administered by the Great West Life Assurance Company and had benefits payable under the *Pension Act* unlawfully deducted from their long term disability benefits payable and to take such actions and conduct such proceedings as they may consider necessary or proper for the conduct of the proceedings.

I understand that this litigation is to be pursued on a contingency basis such that fees and disbursements with respect to the common issues will be payable only in the event of success in the class proceedings.

I understand that "success in a class proceeding" includes:

- (a) judgment on the common issues in favour of some or all class members; and
- (b) a settlement that benefits one or more class members.

I understand that McInnes Cooper shall be entitled to a legal fee, which is a percentage of the total value of any settlement or judgment to the class inclusive of any award of costs. I understand that the above percentage will be calculated based the following:

- (a) 30% fee if the litigation is settled or goes to trial. The 30% fee is also payable if the litigation is settled pre or post certification as a Class Action or if other counsel is appointed by a court or the client forms a class in a separate action;
- (b) 35% fee if the matter is appealed.

I understand that in addition to any legal fee, Harmonized Sales Tax will be payable in addition to the legal fee. McInnes Cooper will also be entitled to recover from any settlement or judgment all disbursements incurred.

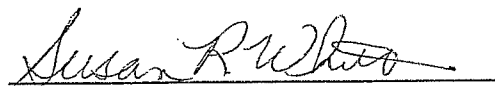
- 2 -

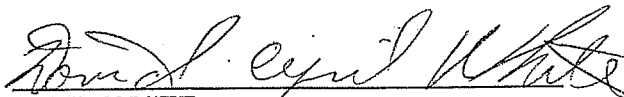
I understand that the total legal fee will vary according to the total value of any settlement or judgment which may result from this litigation. I understand that the value of the settlement or judgment shall include the amount of future payments increased as a result of the settlement or judgment. I understand that any such settlement or judgment could vary greatly depending on several factors, including the total number of persons whose long-term disability benefits were reduced by the amount of their aforementioned pension benefits, the nature of the litigation and the nature of the settlement or judgment. By way of illustration only, I understand that in the event that a judgment of \$15 million was awarded and upheld following any and all appeals, I understand that the total legal fee payable to McInnes Cooper would be \$4.5 million (if no appeal) or \$5.25 million (if an appeal). I understand that the legal fee could be significantly lower than this amount, or significantly higher than this amount, depending upon the size of the damages to the Class. I understand that in the event that no judgment or settlement results, no legal fee will be payable.

I understand that this Retainer Agreement, and any fees awarded pursuant to the Retainer Agreement, shall be subject to approval of the Federal Court.

This Retainer Agreement replaces any previous Retainer Agreement, which I may have executed. In addition to this Retainer Agreement I acknowledge that I will be required to execute a formal Contingency Fee Agreement the terms of which will also govern my retention of the law firm of McInnes Cooper.

Dated at Halifax, in the Province of Nova Scotia this 9<sup>th</sup> day of May, 2012.

  
Witness

  
DAVID WHITE

THIS AGREEMENT made in duplicate this 9th day of May, 2012.

BETWEEN:

**MR. DAVID WHITE**, of Bridgewater, in the Province of Nova Scotia

(hereinafter called the Client)

OF THE FIRST PART

- and -

**McINNES COOPER** of Halifax, in the County of Halifax, Province of Nova Scotia, Barristers and Solicitors

(hereinafter called the Solicitors)

OF THE SECOND PART

**WHEREAS** the Client has retained the Solicitors herein to assist him as the representative plaintiff in connection with a Class Action claim for the recovery of unlawful deductions from long term disability benefits payable to him under plan number 24892 as sponsored by the Royal Canadian Mounted Police and administered by the Great West Life Assurance Company (the "RCMP Ltd. Offset") and any general, punitive, exemplary and aggravated damages arising therefrom.

**NOW THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants herein;

**1. Authorization to Act**

The Client does hereby authorize the Solicitors to act for him in his capacity as a representative plaintiff in connection generally with any claim, claims or Class Action claim he may have arising out of the RCMP Offset and any general, punitive, exemplary and aggravated damages arising therefrom, and without limiting the generality of the Solicitors' instructions, more particularly to commence and conduct an Action or Class Action in whatever Court the Solicitors in their sole discretion deem appropriate or advisable against any person or persons against whom it is their opinion that the Client has a reasonable cause of action for the purpose of recovering damages on the Client's behalf, and to retain additional Solicitors, if the Solicitors deem it necessary or advisable.

**2. Other Personnel May be Engaged**

The Client acknowledges and agrees that the Solicitors may employ the services of solicitors, articling clerks and paralegals who are engaged with McInnes Cooper to assist in the conduct of the file as the Solicitors see fit, which services shall be charged to the Client's file at each service provider's hourly rate. The client understands that McInnes Cooper may associate with other law firms in Canada.

### 3. Authority to Negotiate and Settle Subject to Approval

The Client hereby authorizes the Solicitors to do anything else necessary for the protection of the Client's interest and to act as the Client's Solicitors therein in any such matter as the Solicitors deem expedient and proper and to negotiate and/or settle the said action for such sum or sums as the Solicitors may deem proper subject to the Client's approval of the quantum, and for so doing, let this be the Solicitors' good and sufficient authority.

### 4. Fees

For professional services rendered the Client will pay to the Solicitors legal fees on a contingency basis as follows:

#### (a) 30% Fee If Settled or If Goes to Trial

Should the suit for damages arising out of the aforementioned claim be settled pre or post certification of the matter as a Class Action in a manner and amount satisfactory to the Client, or proceed to trial, a sum equivalent to Thirty (30%) percent of the gross amount received by the Client, and to be received by the Client in increased future payments, from the opposing party or awarded by the Court to the Client, those costs allowed in the settlement or upon taxation, and in addition, all recovered disbursements and any recovered Harmonized Sales Tax, after deduction of such disbursements and Harmonized Sales Tax already paid for by the Client. Should the Court appoint other counsel to act as class counsel in this action, or if this action is stayed and the client forms a class represented in separate proceeding, the Thirty (30%) percent is still payable to the Solicitors and the Solicitors will represent the Client in the collection of the proportionate share from any class settlement amount. The counsel fee collected by the class counsel will be deducted from the aggregate claim before the Client's entitlement and the Thirty (30%) percent fee is determined.

#### (b) 35% Fee if the Matter is Appealed

Should the matter go to trial and be appealed, the Client will pay to the Solicitors Thirty-Five (35%) percent of the total recovery after appeal, and those costs allowed by the court and all recovered disbursements and any recovered Harmonized Sales Tax after deduction of such disbursements and Harmonized Sales Tax already paid for by the Client.

#### (c) Fee to Recover On Order

In the event there is any monetary recovery authorized by a decision of the Court, and the Order is not satisfied within thirty (30) days, the Client appoints the Solicitors as counsel and instructs them to pursue all normal and reasonable means to satisfy the Order. The Client agrees to pay the Solicitors an additional fee for their services in attempts to satisfy the Order, which fee will be calculated on the basis of the usual hourly rates charged by the lawyer assigned by the Solicitors to collect upon the Order.



## 5. Disbursements

- (a) Any disbursements made by the Solicitors in connection with the matter shall be reimbursed by the Client only in the event of success, with success being defined as:

- i) A judgment in favour of the Client or some or all class members; and
- ii) A settlement that benefits the Client or one or more class members.

The Solicitors undertake to make no disbursement other than those necessarily and reasonably required in connection with the claim.

- (b) The Client and the Solicitors acknowledge that all disbursements shall be separate from the amount payable to the Solicitors in the calculation of legal fees for services under other paragraphs in this Agreement.

## 6. Termination of Agreement

- (a) Should the Solicitors wish to terminate this Agreement at any time before they have effected a settlement in accordance with the Client's instructions, or alternately at any time before a decision by the Court, they shall not be entitled to recover from the Client such amounts as they have paid out in disbursements inclusive of interest thereon as calculated pursuant to paragraph 5(i).
- (b) Notwithstanding paragraph 6(a), should the Solicitors wish to terminate this Agreement at any time before they have effected settlement in accordance with the Client's instructions, or alternately at any time before a decision by the Court, they shall be entitled to withdraw, upon reasonable notice to the Client, without compensation;
- (c) If the Solicitors negotiate a settlement of the claim which they recommend that the Client accept, and the Client is unwilling to instruct them to accept it, then they shall be entitled to withdraw from further representation of the Client in the matter; AND the Solicitors are to be paid an amount equivalent to that which they would have been entitled to receive in fees in accordance with the calculations set forth in paragraph 4 above, with the amount of the settlement offer negotiated by the Solicitors being taken as the amount recovered, in addition to its full disbursement account with interest thereon;
- (d) Should the Client wish to terminate this arrangement at any time before the negotiation of a settlement (or alternately, a decision of the Court), whether to retain a new firm of solicitors or to abandon the claim, then the Solicitors are to be paid on a *pro rata* basis with respect to the time spent by the Solicitors as valued in accordance with their usual hourly rates which range from \$80.00 per hour for paralegals, to \$300.00 per hour for partners and senior solicitors. For example, should the value of time spent by the Solicitors represent 1/3 of the total contingent fee award, the Solicitors shall be entitled to 1/3 of that award. Further, should the fee award be granted on a multiplier basis, the Solicitors shall be entitled to the value of their time on that same multiplier approved by the

- 4 -

Court. Any amount which may be due in respect of expenses, disbursements and interest thereon, as provided in paragraph 5, shall also be paid.

- (e) The Client agrees to assist the Solicitors in their conduct of the matter. A refusal to comply with any reasonable request made by them may, at the sole discretion of the Solicitors, result in the termination of this Agreement, and the Client shall be obligated to pay a fee calculated in accordance with paragraph 8.

#### **7. When the Solicitors Can Withdraw**

It is hereby agreed and consented to by the Client that the Solicitors may withdraw and refuse to carry forward the case on a contingency fee basis if any one of the following situations occurs in the opinion of the Solicitors:

- (a) If new facts become known to the Solicitors, which at the time of entering into the contingency agreement the Client did not bring to the attention of the Solicitors or if the Solicitors discovered these facts during investigation, discovery or in some other fashion and because of the finding of these new facts, the Solicitors believe the case is in serious jeopardy of being lost;
- (b) If the legal research completed after entering into the contingency agreement combined with the facts that evolve should indicate in the opinion of the Solicitors that the likelihood for recovery at trial is unlikely;
- (c) If an offer is made to the Client and it was rejected by the Client against the advice of the Solicitors, then the Solicitors may withdraw and allow the Client to obtain new Solicitor so long as such transfer of file can be completed without prejudice to the Client.

#### **8. Contingency Applies to Global Structure Settlement Award or Settlement**

Both the Client and the Solicitors acknowledge that at the conclusion of this case, be it resolved by settlement or final judgment, the Solicitors' legal fees will be the aforementioned percent (30% or 35% as the case may be) of the amount in present value terms that the Client recovers.

#### **9. Privacy Act**

The federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) applies to law firms and lawyers that collect, use and disclose personal information in the course of commercial activities. With regard to the personal information provided by the Client to the Solicitors, under certain circumstances the Solicitors will disclose the Client's personal information:

- (a) when required or authorized by law to do so, for example if a court issues a subpoena;
- (b) when the legal services the Solicitors are providing to the Client require the Solicitors to give the Client's information to third parties or class members, the Client's consent will be implied unless the Client advises the Solicitor otherwise;

- 5 -

- (c) where it is necessary to establish or collect fees;
- (d) if the Solicitors engage a third party to provide administrative services (such as computer back-up services or archival file storage) and the third party is bound by the Solicitor's privacy policy;
- (e) if the Solicitors engage expert witnesses on behalf of the client;
- (f) if the Solicitors retain other law firms in other jurisdictions on behalf of the Client;
- (g) if the information is already publicly known.

**10. Client Must Pay Harmonized Sales Tax on Fees**

The Client hereby acknowledges and agrees that any liability for the Harmonized Sales Tax, caused by the implementation of tax legislation of the Federal Government will be the sole responsibility of the Client and not the Solicitors such that the applicable tax will be deducted from the overall recovery received for the Client and will be paid by the Solicitors to the Federal Government. Further, Harmonized Sales Tax on disbursements will be dealt with in the manner set out in paragraph 4 herein.

**11. Solicitors will be Diligent**

The Solicitors agree to use all due diligence in the application of their professional knowledge to the benefit of the Client's claim.

**12. Only Applies to One Claim**

The parties hereto agree that this agreement is solely for a claim arising out of the unlawful deductions under plan number 24892 as sponsored by the Royal Canadian Mounted Police and administered by the Great West Life Assurance Company and any general, punitive, exemplary or aggravated damages arising therefrom.


**13. General**

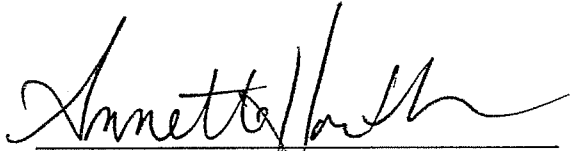
- (a) The Client acknowledges that the fees to be paid to the Solicitors pursuant to this Agreement are fair, just, and reasonable. The Client further acknowledges fully understanding the conditions and implications of this Agreement before first entering into and signing the Agreement, and without being put under any pressure or undue influence by the Solicitor and they have had the opportunity to seek independent legal advice in relation thereto.
- (b) The Client and the Solicitors acknowledge that the consideration for this Agreement is set forth in the mutual covenants set forth above.
- (c) The Client and the Solicitors acknowledge that payment of the fees, taxes and disbursements under this Agreement require approval of the Court.

**IN WITNESS WHEREOF** the parties hereto have hereunto set their hands and affixed their seals the day and year first written above.


- 6 -

**SIGNED, SEALED and DELIVERED**  
in the presence of:

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
**DAVID WHITE**

  
\_\_\_\_\_  
**PETER DRISCOLL**  
1300-1969 Upper Water Street  
Purdy's Wharf Tower II  
PO Box 730  
Halifax, NS B3J 2V1