

**FEDERAL COURT**

**CERTIFIED CLASS ACTION**

**BETWEEN:**

**DENNIS MANUGE**

**PLAINTIFF**

**- AND -**

**HER MAJESTY THE QUEEN**

**DEFENDANT**

**ORDER**

**THIS COURT ORDERS the following:**

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 after the issuance of this Order ("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 An Opt Out may be withdrawn before the end of the Opt Out Period.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 net<sup>2</sup> 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 net<sup>1</sup> 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);
- 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

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<sup>1</sup> 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.

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. 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 (the "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 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 T4 and T4A 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.
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 a form approved by the Court (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;
  - 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;
  - c. The Notice shall be emailed by Class Counsel to class members of whom they are aware;
  - d. The parties will issue a joint press release in respect of the Notice;
  - 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; and
  - 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.
27. Class Counsel's fees and disbursements shall be approved by the Court after submissions. Class Counsel shall be paid fees and disbursements in an amount and manner ordered by the Court.
  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.

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Judge

Form of Order Consented To:

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Paul Vickery, Lori Rasmussen, and Travis Henderson  
Solicitors for the Defendant

Form of Order Consented To:

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Ward Branch, Peter Driscoll, and Dan Wallace  
Solicitors for the Plaintiff Class