



Pension Surplus Appeal

In December 2007, the Armed Forces Pensioners'/Annuitants' Association of Canada and various other federal unions and associations filed appeals of the decision dated November 20, 2007 of the Ontario Superior Court of Justice dismissing the challenges to the pension legislation passed by the government in 1999 (Bill C-78). The legislation purports to allow the government to appropriate over \$30 billion in pension surplus in the Canadian Forces, RCMP and Public Service Superannuation plans.

The unions and associations had argued that the members and retirees of the Superannuation Plans have an “equitable” ownership interest in the assets in the Superannuation Accounts. They claimed that Bill C-78 does not authorize the government to remove surplus from the Accounts as this would amount to unlawful expropriation. They also alleged that the amortization of the surplus in the Superannuation Accounts during the 1990s amounted to a breach of the government’s fiduciary obligations toward the members and retirees of the plans. Finally, the plaintiffs took the position that if Bill C-78 did allow for confiscation of the surplus, the provisions are contrary to the equality provisions under section 15 of the Canadian *Charter of Rights and Freedoms*.

The Armed Forces Pensioners'/Annuitants' Association of Canada and the unions and associations are currently working with their legal counsel to prepare the materials for the appeal. It is anticipated that the appeals will be argued before the Court of Appeal for Ontario in late 2009 or early 2010.