



Armed Force Pensioners' / Annuitants' Association of Canada

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Armed Force Pensioners Lose Battle with Government Over Pension Surplus Funds

(Renfrew, ON): Thousands of veterans and retired and existing public servants are in mourning today, having lost a decade-long battle against the Government of Canada over the use of their pension surplus — to the tune of \$30 billion — to pay down the national debt.

“The battle against politicians and bureaucrats is a war we were never trained for,” says Tony Huntley, National Chairman of the Armed Force Pensioners’/Annuitants’ Association of Canada (AFP), one of 17 alliances and associations that took the government to court over the deemed illegal seizure of the surplus. “We trusted our country to look after us through the damage to our minds, bodies and families that our unwavering service to the crown caused.”

In April 1999, under the Chrétien government, the Treasury Board of Canada produced *Bill C-78*, which among other things included the disposal of the pension surplus that remained in various federal superannuation accounts (the surplus was a result of plan members’ contributions of about 42 per cent). Here’s how the surplus occurred: Employees’ contributions were taken off their paycheques and credited to the account. By the 1990s, the accounts started to grow a surplus that exploded as the 1990s wore on. Obsessed with reducing the federal deficit, the government reasoned that since it was responsible for covering any shortfall in the plan, it was entitled to any surplus. To do this, it came up with an accounting manoeuvre to withdraw the surplus from the pension funds in a series of annual spending reductions. It then used a second “adjustment allowance” account to write down that amount against the debt.

Treasury Board refused to negotiate any sharing of the surplus from these defined-benefit pension plans between the employer, employees and retirees. On September 7, 1999, the legislation was passed into law, granting the government access to the \$30-billion pension surplus, which it used to reduce the national debt. The \$30-billion figure comprised \$14.9 billion from the public service account, \$12.9 billion from the Canadian Forces’ account and \$2.4 billion from the RCMP account.

The AFP and other groups agreed to do battle in the courtroom — a decision that has cost the plaintiffs thousands and thousands of dollars in legal fees. “The federal government violated a trust as our

employer by abandoning its duty to manage our pension contributions on our behalf,” says Chuck McCabe, AFP treasurer and board member.

In 1999, three separate court actions were launched and tried together in the Ontario Superior Court of Justice. One action, by the Public Service Alliance of Canada, argued that the members and retirees of the superannuation plans have an equitable ownership interest in the assets; the second, by the Professional Institute of the Public Service of Canada, that *Bill C-78* does not authorize the government to remove the surplus from the accounts; and the third, by the Canadian Association of Professional Employees, the AFP and three provincial RCMP associations, that the amortization of the surplus amounted to a breach of the government’s fiduciary obligations towards the members and retirees. If the legislation did allow for confiscation, the plaintiffs also argued that the provisions are contrary to the equality provisions under the Canadian Charter of Rights and Freedoms.

The late Honourable Mr. Justice A. de Lotbinière Panet heard and dismissed the case on November 20, 2007, on the grounds that the contributors to the pension funds “have no equitable interest in the superannuation accounts.”

The plaintiffs appealed, and in April 2010, the Ontario Court of Appeal reserved judgment in the case — largely upholding the trial judge’s decision. After meeting with their legal counsels, all but one of the original 17 plaintiffs, including the AFP, agreed to appeal the finding by Justice Panet to the Supreme Court of Canada.

Even though the AFP and the other associations were advised a decision weighing in their favour would be slim at best, the AFP had placed some significance on the fact that the Supreme Court agreed to hear the case. “It doesn’t normally do so unless it believes that the appeal has some merit,” says Mr. McCabe.

“Naturally we are disappointed in the decision,” he adds. “This decision by the Supreme Court sends a strong signal to the government that it can do what it wants with our employee pension contributions. Who’s to say that down the road, private industry won’t do the same thing?”