

**COMMUNITY RADIO STATION, HAMILTON, ONTARIO**  
**VETERANS TRUST FUND LAWSUIT**  
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Geoff Langhorne: Please welcome Cliff Chadderton, CEO of The War Amps and today, particularly, Chairman of the National Council of Veteran Associations in Canada. We are going to talk about the veterans and veterans' relatives claim for \$4.6 billion in interest on veterans pensions held by the Federal Government. Cliff, welcome to the show.

HCC: Yes, thank you very much. Now a lot of people know me as Chief Executive Officer of The War Amps of Canada and I'm not acting in that capacity in this particular instance. Secondly, I have a claim as a qualified advocate for the Human Rights Commission, so if it goes to the Human Rights Commission I would be called unquestionably.

Geoff: Well, let's hope it doesn't go there, I have a feeling that that probably wouldn't result in any billions of dollars in awards.

HCC: No I don't think so. I don't think so but in this particular issue I'm speaking as Chairman of the National Council of Veteran Associations. I might also say the only large group that is not part of our National Council is the Legion but the Legion has now come out with a letter of support for my stand.

Geoff: Is that right?

HCC: Yes.

Geoff: The award for disabled vets is the length of the time that is has taken has outlived most of the vets. I think that's at the heart of your issue. Where do the veterans stand right now?

HCC: Well, firstly, Judge Brockenshire has been looking at the legal aspects of whether this was held by the Government in a trust arrangement and if so, he feels that interest should have been paid on the funds but Veterans Affairs looks at it quite differently. They

look at it as an added benefit, not available under law, to veterans who were unable to handle their money when they were wards of DVA as mentally incompetent people.

Geoff: Let me get this straight. Essentially Veterans Affairs regards this as a favour.

HCC: Absolutely. They have said as much as a matter of fact.

Geoff: I dislike the view that it is a favour because I don't think that disabled people who are due money should get it as a favour but it is an extraordinary arrangement, can we go that far?

HCC: Well I was against them calling it that too. What they should have said was it was an extraordinary arrangement under which we are looking after the man's money but that's all we are doing, we are not holding it in trust, we don't have authority to invest it and we must account for every penny of it.

Geoff: How do you feel about that?

HCC: Well I usually fight for veterans as hard as I can, but in this particular issue I don't think that the veterans concerned have a leg to stand on and the reason I say that is that there never was any authority under the Veterans Affairs Act to do anything except look after the man's money if he requested it. There never was any authority for them to take the funds, invest them and pay interest on them. They were simply custodians of the

money as long as the man wanted them to be custodians of the money. That was, for most of them, for the duration of their lives because they were mentally incompetent. One of the issues becomes a real issue in my mind, the media has played it as being an issue for disabled veterans and, of course, particularly we are just finishing with the Year of the Veteran and there was a lot of emphasis placed on making certain that the Government did the right thing by those who had served in the military forces, particularly during the time of war.

Geoff: Right.

HCC: The issue is not one of a Government benefit for having served, the issue is – was the Government acting as a trust company looking after the funds and if so is the Government obligated to pay interest. Well, of course, the Government just says “we never were anything except custodians of this money, we didn’t have the use of it, we had to put it into accounts where it would be held, not for the purposes of Government spending but it was being held for incompetent veterans to be paid out when they said so, which was usually when they died.”

Geoff: Was it, in fact, sequestered from other money?

HCC: Yes, I mean, I checked the records with Deer Lodge Hospital in Winnipeg, if the veteran was mentally incompetent and his pension was being administered by DVA, there was an account in his name, held in the records of Deer Lodge Hospital in Winnipeg to be paid out at his direction. Now if the man wanted out of the arrangement at any time, assuming he was mentally competent, he could get it. Most of them, however, just allowed the funds to stay there until they died.

Geoff: Right. Can we say that they allowed the funds when in fact they were not competent. If they are not competent, they are not free to make any decision about the money, then the Government, who was holding the money, made the decisions for them. I have some kind of conflict with understanding that.

HCC: No that is a legitimate question. You are dealing here, of course, with another issue and that is that if the person was mentally incompetent to the extent that he could not handle his money, then that’s the reason that he was not mentally competent to say who should handle them. In lieu of an arrangement with the man who would understand Veterans Affairs said “well, we do have authority to hold a man’s funds for him until such time as he dies or their competent custodian can be found.” Every now and again the man would have said in his earlier days “look I have a son somewhere.” Then DVA would then look his son up and if the man, despite his suffering from dementia or whatever, if the man was able to say “give \$200 to my son.” DVA would do it otherwise DVA was in a tough spot because they had to have authority before they could release

these monies to anyone. Where it became a real issue was these veterans or people in receipt of War Veterans Allowance which, you know is sort of a welfare measure for veterans, they built up huge estates because DVA was paying their pensions or paying their allowances all the time they were in these hospitals. So when they died some of them had estates of as much as half a million dollars which eventually DVA had to find a relative or something, if DVA could find a relative and pay the money. Naturally, the relative would say "well, how come there is no interest on this?" DVA had to say "well, I'm sorry but there never was any authority under which we could do other than hold the money in this account for the man." There was no authority to act as a trustee.

Geoff: Really.

HCC: Oh, no there never was. I'm quoting now Section 5 of the DVA Act which says that the Department has the capability if the man is judged medically, by his Doctor or DVA, if he is judged to be mentally incompetent, DVA has the authority to hold the money in the man's name until such time as he dies. That's usually the case.

Geoff: From my point of view that cuts both ways, it may not grow but it can never decline because it is not invested, it can never decline.

HCC: Yes.

Geoff: So their offer to hold it is a form of guarantee that comes at an understandable price.

HCC: Yes and not only that but like all monies which are held by the Government, it does increase in accordance with the cost of living allowance. For example... each year the cost of living allowance on my pension is something like 7% over the past 12 months, so if they were holding my money for me, the money that they are holding would have an accrual ...

Geoff: So it would be indexed the following year to increase by 7%...

HCC: Yes, that's quite correct.

Geoff: Yes.

HCC: We have the classic case here of the long-lost relative who shows up at the funeral or at the reading of the will and says "well, how much am I going to get?" At probate, the lawyer would say "your share would be say \$150,000." Then the beneficiary would say "well, where did this money come from?" Well it came from DVA, they were holding it as custodians. Then the man would say "did they pay any interest?" The answer was no they didn't because they never had any authority to pay interest, but by the same token they never had any authority to use it. Whereas if it was Canada Trust or anything and you put your money in Canada Trust, they will pay on an annuity or something they will pay a certain amount of interest but Canada Trust has the use of your money. Whereas in this case DVA did not have the use of the money, it just sat in the account.

Geoff: Let's go further and let's imagine that it was placed in something like Confederation Life, how much of your money would you have today. It would be a toss-up wouldn't it.

HCC: Absolutely right.

Geoff: We will now take a short break.

HCC: ...They tell me they are going to appeal it.

Geoff: They told you that?

HCC: Yes. They told the media that they are going to appeal it. I have noticed in my work that in the last year or so people particularly have been very conscious of making sure that the veterans are looked after. I think my record is pretty clear that I have pushed pretty hard in some areas for that but in this particular area I have nowhere to push because I know the law and the only way that the law could change is if it goes to the Supreme Court of Canada, even the Superior Court of Ontario who made this decision doesn't have the authority, the final authority and that is why it will have to go to the Supreme Court of Canada if anything is going to be done and by that

time we have another 3 or 4 years and there won't be anybody left who could benefit.

Geoff: Yes, I think you're correct. In the best of all possible worlds, what would you like to see political parties advocating for with regards to this benefit in this election?

HCC: Yes. I put a proposal up to the Minister of Veterans Affairs last July and I said "look this is going to get lost in the courts, court actions and whatnot. What I suggest you do is get a waiver on the whole issue, set up a committee, dig out any justifiable cases and have someone total up what the interest should have been and go ahead and pay it."

Geoff: I see to qualify the accounts.

HCC: Absolutely. So there is no living veteran or spouse who is being denied something if they could benefit from it but DVA would certainly not take into account applications from 52<sup>nd</sup> degree cousins or something like that.

Geoff: You get into a gray area that surfaced in the Liberal platform too which is – how do we take care of caregivers who are not blood relatives? You are speaking that veterans and their spouses understandably, I am wondering what happens to veterans children or as you say veterans cousins who have understandably taken on their care, what do you think should happen?

HCC: You see you have to go back to the law and the Veterans Pension Act will pay a pension to a veteran and spouse or any child under 17 years of age if it's a male, 16 if it's a female, now once the child reaches one of those magic ages, then that child is no longer a ward of DVA and DVA has nothing to do with them but they still are responsible to pay a pension to the man and if the man dies they are responsible to pay a widow's pension and they continue to do that until the man dies and then the widow dies and then, of course, they are off the books of DVA.

Geoff: So as far as they are concerned, if they cannot assume the veterans care then it is not their liability, they will provide for his

care or her care but other than that they are not going to cover any expenses for care in another environment.

HCC: We use the word fiscal. They have no fiscal responsibility for anybody except a veteran or his spouse or a child of school age and that's where it dies as far as the legislation is concerned. The one case that really set the issue, was the case of the man by the name of Authorson who is now dead. Now with regard to Authorson a relative showed up and said "look I was a niece." She was a niece and she got paid the balance of Authorson's estate after he died but that's it and she wanted interest paid on it and that's when the lawyers said "well this is a classic class action case." I don't disagree with that, I think you could use class actions for almost anything but that doesn't mean you are going to win them.

Geoff: So that whole \$4.6 billion is all interest, that's all it is?

HCC: Yes, that's all it is, Geoff, it's 100% interest. What I am saying is that if DVA was authorized to do that and pay out \$4.5 billion, what about my 10,000 cases that I have got before DVA now or long-term care beds because DVA says "we don't have the beds." DVA turned all their hospitals over to the provinces. It becomes a real issue of when you get in the fiscal responsibility, the real issue of who is there to protect the taxpayer. The taxpayer does very well by the veterans so far as I am concerned but you can't expect the taxpayer to fork out \$4.5 billion for long-distant relatives. That's really why the Department of Justice has to appeal this. We have had proposals in front of Parliamentary Committees for the last three or four years saying that you are not meeting the needs, there is a long waiting list in every city in Canada you want to mention or in every place where there is a DVA hospital, there is a long waiting list to get in and there are no beds. So what they try to do is they try to buy space from the provinces but as you probably know, the provinces are short of long term care beds anyways and they, the provinces, have no responsibility for veterans at all.

Geoff: The provinces have actually inherited the DVA beds.

HCC: Absolutely.

Geoff: So in effect they are now at the provinces disposal so DVA has no need to get any better.

HCC: Yes the only example where that is not effective is the University of Toronto which runs Sunnybrook, the Board of Governors of Sunnybrook are appointed by the University of Toronto.

Geoff: Oh I see rather than political appointments.

HCC: That's correct. Or rather than come under the Ontario Government, like in Manitoba, Deer Lodge is the big hospital and that comes under the care of the Minister of Health for the Province. They have an efficient board where they will allow so many veterans space but they also say we have to save some space for non-veterans who are civilians because we have a responsibility to the civilians not to the veterans and so they give the veteran a bed but they give it to him as a civilian, not as a veteran.

Geoff: My goodness.

HCC: Yes, it is a very complicated issue and I know quite a bit about it. Now when DVA gave up these hospitals, they gave them up entirely to provincial jurisdiction. Now I don't have ...

Geoff: Why did they do that? Was it expensive?

HCC: No, it wasn't. Why they did it was because they couldn't get doctors who wanted to take active treatment cases. So they couldn't look after them but they held back a certain number of beds where they could staff them with people who could provide long term care in a hospital setting.

Geoff: So in effect they were kind of driven to do this.

HCC: Absolutely. Particularly these younger doctors, they were coming out of the medical schools and looking for active cases and they would say "now just a minute I didn't take 10 years of extra training to look after old veterans, let DVA look after them." DVA said

OK, but DVA wouldn't pay the money that these doctors wanted and besides the doctors didn't want to practice that kind of medicine.

Geoff: Beyond that the doctors need the money with the costs today. They can't be choosy when they graduate, I don't imagine about what they are paid.

HCC: No. I think that DVA has a legitimate reason right now to say to me "look, we can't take these cases on because we don't have the money." If they have to turn around and add another \$4.5 billion to their budget and pay it out to distant relatives, then I'm going to have... as an advocate we are going to have... advocates are going to have a much more difficult time.

Geoff: OK. Your point of view today is that today's veterans are competing with the relatives of yesterday's veterans.

HCC: Absolutely. I couldn't have said it better myself. That's exactly what it is.

Geoff: What you are also saying is that these funds have been paid out.

HCC: Oh Yes.

Geoff: What we are talking about now is the interest. Have they literally been paid like cash in hand?

HCC: Oh yes. Oh yes. DVA firstly because it is before the courts, they can't come out and defend themselves and even if they could, you can imagine the uproar in the media if DVA says "No we have authority to pay this money but we're not going to pay it because it is not justifiable and legitimate." It was a calculation by the courts.

Geoff: Has any political spokesperson either in power or in opposition or standing for election come out with an alternative or a deeper understanding of this issue such as you've explained it to me and to our listeners today.

HCC: Unfortunately, the answer to that is no and, of course, all political parties are hiding behind the old adage that it is before the courts.

Geoff: Yes alright.

HCC: That wouldn't stop them if they wanted to make a commitment but they realized that it would be misunderstood in the media. Whatever party added a plank in their platform saying "look pay this \$4.5 billion." Then they are going against the decision then and somebody would say "well you can't do that unless it goes to the Supreme Court," and the Supreme Court takes the Charter of Rights and Freedom in Canada and decides to give what they call an ex-gratia payment which is beyond the law, of course.

Geoff: I see.

HCC: Yes.

Geoff: OK. So I guess what you would be hoping for realistically, I'm trying to grasp the big picture here, is that the Federal Government will come up ... or at least will appeal and then immediately follow it with a Federal offer that will include living relatives rather than the distant relatives.

HCC: Absolutely. I think that the answer is regardless of the law put up a proposal for an ex-gratia payment for these people and we will get all their details and we will say "Yes, Helen Jones visited her distant uncle every Saturday morning for the last 10 years of her life, go ahead and pay it to her." But the kind of relatives that are showing up in this class action are the ones who just came out of the woodwork and ... there are some genuine cases but ... came out of the woodwork and said "Hey wait a minute the Government's got lots of money and I can get a piece of it." The way to solve this is by going to an ex-gratia payment, they have done it for Merchant Seamen, they have done it for Hong Kong veterans, they can do it for this group too.

Geoff: What about the issue of taxes on these payments?

HCC: Well the Judge had said that it's not tax-free.

Geoff: It's not tax-free?

HCC: No it's not tax-free. No. Even though there was one quote from one of the lawyers, David Greenaway, who said that as much as they argued for it the courts said "we don't have the right to declare this kind of income as being tax-free." That again mitigates against their case because war disability pensions are tax-free.

Geoff: So accumulated pensions should be tax-free too.

HCC: Well absolutely. Yes. What you can do is you can say "well, let's make it available as an ex-gratia payment." Which really means that the law doesn't cover it but we feel that it is something that should be done.

Geoff: In which case it is made as called for, no taxes, no complications, just paid out.

HCC: That's exactly it. Yes.

Geoff: Yes. OK.

HCC: I want to clarify one point and that is that I personally and my organization, we did not bring this up at this time, it was brought up by the Judge who declared his decision. Then, of course, the media got after me and said "well, what do you think about it?" I said "well, I don't see how a Judge can overrule the law unless he does it by means of the Charter of Rights and Freedoms and goes to an ex-gratia payment or something." So that makes me look bad.

Geoff: Yes. Alright. I appreciate your time with me today.

HCC: Not at all, Geoff. Good luck to you and good luck to any veterans who are genuinely involved in this case and where the money should be paid.