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Former veteran battles legal system

Former army veteran Bradley Campbell of Brisbane found himself battling a war against the legal system. He served in the Australian Army for 13 years as a diesel mechanic and in active service in Timor but when medically discharged he found himself fighting a battle against the Commonwealth Superannuation Corporation.

Mr Campbell was forced to apply to the Federal Court to settle a dispute over the incorrect valuation of invalidity benefit payments, which are paid as a fortnightly amount to compensate him for his loss of army income. These incorrect valuations skewed his true financial position when Mr Campbell was negotiating his divorce settlement. With the support of a community legal centre, he was eventually successful in his claim and his battle set a precedent so that other former military staff won't face the same problem.

Mr. Campbell spent what little money he had to get advice from a private lawyer, but the cost and complexity of the legal issue meant that he had to represent himself in Court. As he had no experience of court proceedings, he was at a distinct disadvantage and didn't have the expertise of the Commonwealth Superannuation Corporation to argue his side of the case.

Mr Campbell commented, 'Being in the army you face many stressful and nerve-wracking experiences. Representing myself in court was like having to face up to the school bully when you are on your own and he has a team fighting for him. The experience showed me how difficult it was to navigate the legal system.'

'I had no experience, a pile of legal papers as tall as a coke bottle and the risk of having to pay the legal fees of the Commonwealth Superannuation Corporation if I got it wrong. The thought of other veterans having to go through the same battle after they had served the country so willingly, kept me going.'

Mr Campbell found that private practice law firms were not able to deal with the unique facts of his case, which combined family, superannuation and military law issues. At the initial hearing, Mr. Campbell was made aware of the Queensland Public Interest Law Clearing House (QPILCH) which specialises in preparing people to represent themselves in Court. QPILCH were able to look at all aspects of his case and across the different areas of law.

Over a series of appointments, QPILCH staff helped Bradley to begin drafting his submissions and to articulate the right questions of law. Following the hearing, the Federal Court allowed Bradley to file further submissions on the issue of whether a military invalidity benefit constituted a defined benefit interest under the Family Law Act.

As there hadn't been any prior decisions made on this issue, the judgment of the Federal Court sets a new precedent for the way property settlement cases involving veteran's invalidity pensions are decided.

Mr Campbell commented, 'I couldn't afford a legal team, so being assisted by a community legal service to help with the regulatory process and how to write a submission was a great help.'



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'QPILCH highlighted the very important fact that I had not included questions of law in my appeal. Without their help my appeal would have failed and I would not have achieved the outcome I did. It is great that I am able to help other soldiers facing the same problem.'

'It appalls me when I hear that the government is considering cutting funding to community legal services. Any decrease in funding and resources for community legal services would mean that person like me would not be able to access the resources needed to prepare for court and secure fair and just outcomes,' Mr Campbell concluded.

Ends

NOTES:

- Community Legal Centres Queensland Inc (formerly QAILS) is the state-wide peak body representing community legal centres in Queensland. Queensland community legal centres have 40 years of service delivery experience providing free information, advice and referral, casework and representation to the community. www.communitylegalqld.org.au
- Bradley Campbell, was dependent on an invalidity pension from the Military Superannuation and Benefits Scheme (MSBS). Bradley had been involved in family law property-proceedings before the Federal Circuit Court and complications arose when the Trustee for MSBS reported that his pension was a defined benefit interest in calculating his splittable superannuation interest under the Family Law Act 1975 (Cth).
- Mr Campbell lodged a complaint about the trustee's decision to the Superannuation Complaints Tribunal, however the Tribunal withdrew his complaint, describing it as 'misconceived'. Mr Campbell later commenced proceedings in the Federal Court seeking a review of the Tribunal's decision. Following the hearing, the Federal Court granted leave for the parties to file further submissions on the issue of whether a military invalidity benefit constituted a defined benefit interest under the Family Law Act 1975. The Federal Court subsequently found that errors of law had been made by the Tribunal in withdrawing Mr Campbell's complaint and that military invalidity payments did not constitute a defined benefit interest under the Family Law Act 1975 (Cth).
- The incorrect valuation of invalidity benefit payments, which are paid as a fortnightly amount, to compensate for loss of income. The payments injured veterans receive are being subjected to incorrect valuation methods, which at times, value these payments well over one million dollars. These incorrect valuations skew that spouses' true financial position when negotiating divorce settlements. To avoid having to split this 'income', veterans often give up large portions of their property. These million dollar valuations may never eventuate due to the nature of the payment and its reviewability, and does not take into account the fact that the payments are of a compensatory nature.

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