



The National Council of Veteran Associations in Canada



**SUBMISSION TO THE
STANDING COMMITTEE ON
VETERANS AFFAIRS
RE: STATUTORY AMENDMENTS
TO THE NEW VETERANS CHARTER/
THE SUPPORT FOR VETERANS
AND THEIR FAMILIES ACT**

MAY 2015

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National Council of Veteran Associations in Canada



The National Council of Veteran Associations in Canada

- 1st Canadian Parachute Battalion Association
- 14th Canadian Field Regiment Association
- 435-436 & Burma Squadrons Association
- Air Force Association of Canada
- Aircrew Association
- The Algonquin Regiment Veterans' Association
- Armed Forces Pensioners'/Annuitants' Association of Canada
- The Black Watch (Royal Highland Regiment) of Canada Association
- Bomber Command Association Canada
- Burma Star Association
- Canadian Airborne Forces Association
- Canadian Association of World War II Veterans from the Soviet Union
- Canadian Corps Association
- Canadian Fighter Pilots Association
- Canadian Merchant Navy Veterans Association Inc.
- Canadian Naval Air Group
- Canadian Naval Divers Association
- Canadian Paraplegic Association
- The Canadian Scottish Regimental Association
- Canadian Tribal Destroyer Association
- The Chief and Petty Officers' Association
- Dieppe Veterans and Prisoners of War Association
- The Dodo Bird Club of Ex-RCAF Flight Sergeants
- Ferry Command Association
- First Special Service Force Association
- Hong Kong Veterans Association of Canada
- Jewish War Veterans of Canada
- KLB (Konzentrations Lager Buchenwald) Club
- Korea Veterans Association of Canada
- The Limber Gunners
- Métis Nation of Ontario Veterans Council
- The Military Vehicle Hobbyists Association
- National Prisoners of War Association of Canada
- Naval Association of Canada, Montreal Branch
- Naval Club of Toronto
- Nova Scotia Naval Officers Association
- Nursing Sisters' Association of Canada
- Operation Legacy
- The Overseas Club - Canadian Red Cross Corps (Overseas Detachment)
- The Polish Combatants' Association in Canada
- The Queen's Own Rifles of Canada Association
- RCAF Prisoner of War Association
- Regimental Association for the Toronto Scottish Regiment (Queen Elizabeth the Queen Mother's Own)
- Royal Air Forces Escaping Society
- Royal Canadian Air Force Pre-War Club of Canada
- The Royal Canadian Army Service Corps Association
- Royal Canadian Naval Association
- The Royal Canadian Regiment Association
- Royal Naval Association - Southern Ontario Branch
- Royal Winnipeg Rifles Association
- The Sir Arthur Pearson Association of War Blinded
- The South Alberta Light Horse Regimental Association
- Submariners Association of Canada (Central Branch)
- Toronto Police Military Veterans Association
- The War Amputations of Canada
- War Pensioners of Canada
- War Veterans & Friends Club
- The Warriors' Day Parade Council
- White Ensign Club Montreal
- Wren Association of Toronto

SUBMISSION TO THE STANDING COMMITTEE RE: STATUTORY AMENDMENTS TO THE *CANADIAN FORCES MEMBERS AND VETERANS RE-ESTABLISHMENT AND COMPENSATION ACT (NEW VETERANS CHARTER)/THE SUPPORT FOR VETERANS AND THEIR FAMILIES ACT*

Mr. Chairman, we welcome this opportunity to present our position to this Standing Committee on Bill C-59 with particular reference to that portion of the legislation dealing with proposed amendments to the New Veterans Charter.

I would first wish to state that it has become readily apparent, over recent months, that there have been a number of significant developments impacting on the operation of Veterans Affairs Canada and the Department's relationship with the veterans' community.

We would be remiss if we did not commend the Minister and the Deputy Minister on their proactive engagement in the overall reform of the New Veterans Charter and the enhancement of the administrative culture within VAC.

Although much more needs to be done, there is little question, based on our experience of late, that the Department has become far more responsive to the concerns raised by our Service Bureau at The War Amps of Canada, in dealing with specific veterans' issues and individual cases. Indeed, in our recent dealings with VAC, we have particularly noticed that the staff and employees of the Department have been revitalized and we may have passed through the "dark ages" which would have described the level of communication and working relationship which prevailed over the last number of years. As opposed to the state of denial and the abysmal nature of the dialogue which previously was in evidence in VAC, both the Minister and the Deputy have underlined their joint priority in being prepared to listen and consider the concerns and proposals of veteran stakeholder groups in upgrading veterans' legislation including the New Veterans Charter.

With specific reference to Charter reform, it is fair to say that significant momentum and substantial traction has been developed through the various recommendations brought down by the Minister, culminating in the establishment of the current statutory amendments before Parliament which clearly are the Government's attempt to respond to the proposals made by this Standing Committee, the Veterans Ombudsman, the Veterans Consultation Group, the New Veterans Charter Advisory Group and our NCVA organizations.

Unfortunately, as I have stated on countless occasions over recent weeks, the Minister's announcements and the proposed legislative amendments reflect, in my judgement, "half measures" and are clearly not fully responsive to the comprehensive recommendations made by this Standing Committee and the aforementioned multiple advisory groups.

After years of what I have described as unacceptable inertia within VAC, there are solid indications that the first phase of positive incremental change is taking place. It remains our mandate, and I might suggest the responsibility of this Committee and Veterans' Stakeholders at large, to maintain pressure on the Government to complete this vital initiative in addressing the outstanding inequities which still remain in the New Veterans Charter.

I would now like to make a number of general comments and observations concerning the impact of that portion of Bill C-59 dealing with New Veterans Charter amendments:

1. The clear focus on seriously disabled veterans is commendable, as it has consistently been the position of NCVA/WAC that the highest priority to the veterans' community and the Government must be the seriously injured veteran. This prioritization is reflected in the Minister's proposals particularly with regard to the new Retirement Income Security Benefit (RISB), Critical Injury Benefit (CIB), Family Caregiver Relief Benefit (FCRB) and the enhancements to the Permanent Impairment Allowance.
2. It is self evident upon review of the substantive provisions of the statutory amendments that the devil will be in the details, as there are a number of references in the legislation to regulations and policy guidelines which have yet to be formulated to support the general provisions of the Act. It is my opinion that, until these regulations are finalized, it will not be possible to evaluate the precise eligibility criteria for the newly proposed major benefits and the "factors to be considered" in the administration of the new Law. It will be incumbent on Veteran Stakeholders, and indeed this Standing Committee, to monitor closely the draft regulations and policy guidelines to ensure that the substantive provisions of the Act are not diluted or unduly restricted.
3. It is also readily apparent that budgetary constraints still exist, as it is my opinion, upon review of the Minister's announcements and the statutory amendments, that the proposals have been structured to "fit into" the budgetary envelope, resulting in proposed benefits which are targeted to specific cohort veterans rather than the veteran population at large. Unfortunately, in our view, the Government fixation with balancing the Budget in this election year remains a restraint on complete New Veterans Charter reform at this time.
4. As I stated to the Minister through recent correspondence and through my presentation to the Veterans Summit, much more needs to be done to rectify the voids that have been readily identified in the Charter. The present state of development cannot be considered a total fait accompli but merely a significant first stage of remedial legislation.

5. As I have indicated in the past, the true litmus test for judging the new hierarchy within VAC in this context will rest on whether the Minister will continue his commitment to treat the New Veterans Charter as a “Living Charter.” It is promising that, on a number of occasions at the recent Veterans Summit and his recent appearance before this Committee, Minister O’Toole expressed his commitment that he would continue to welcome the input and proposals that all stakeholders may wish to make in furthering this objective.

For those who wish for more information on the additional areas of the Charter, which need to be addressed at this time:

- See the NCVA Submission to the Standing Committee of April 2014 for the full scope and extent of the gaps and inequities that we submitted to the Standing Committee which were largely adopted in the Standing Committee Report of June 2014 “The New Veterans Charter Moving Forward.”
- See also the NCVA Legislative Agenda of November 2014 approved at our Annual General Meeting in Toronto for a comparison of the NCVA proposals, the Standing Committee recommendations and the reply of the former Minister.

In furtherance of our view that this package of statutory amendments is still far from complete, it is our considered opinion that the following gaps and inequities in the New Veterans Charter remain unaddressed:

- 1. The Earnings Loss Benefit should be elevated from 75% of former military income to 100% in accord with the longstanding and consistent recommendations of the New Veterans Charter Advisory Group, NCVA and the Veterans Consultation Group (or at least to 90% as proposed by the Veterans Ombudsman’s office).**

The current reduction of 25% in income is unacceptable particularly given that this loss of essential revenue is imposed when veterans and their families face a period of rehabilitation as they attempt to re-establish themselves in Canadian civilian society.

The insurance industry has long taken the position that this form of income diminishment is necessary in relation to disability income replacement so as to ensure that the insured is fully committed to the rehabilitation program. This form of so called “disincentive” allegedly prevents the insured from merely accepting his or her former wage and not pursuing rehabilitation with appropriate effort.

It has been the opinion of NCVA/WAC for many years that this philosophy should not be applied to disabled veterans who, to a large extent, in our experience, are fully engaged in re-establishing themselves insofar as civilian employment.

Even more importantly, this by-product of the insurance culture has no place in veterans' legislation when applied to permanently incapacitated veterans. Once it has been determined that a veteran is indeed permanently incapacitated (and not capable of obtaining gainful employment as a consequence of his or her pension disability) the Earnings Loss Benefit should recognize that such a veteran is entitled to 100% income replacement. Any sense of "disincentive" is totally inapplicable in such circumstances given the veteran's inability, by definition, to return to the employment workplace.

It is noteworthy that this fundamental proposal as to the increase of the Earnings Loss Benefit has not been addressed by the Government and indeed does not appear to be on the radar of VAC.

It is also of significance that, in the situation of a permanently incapacitated veteran, once this determination is made, a "career probable earnings" approach should be implemented to ensure that the true impact of the projected career income loss is recognized. This proposal is in accord with the recommendations of the New Veterans Charter Advisory Group, the Standing Committee Report, NCVA and the Veterans Consultation Group and can be implemented by further reform of the Permanent Impairment Allowance/ Permanent Impairment Allowance Supplement, or alternatively, a separate evaluation based on the mechanism used by the Canadian Civil Courts to ascertain future loss of income for severely injured plaintiffs.

2. The SISIP Long Term Disability policy needs to be eliminated from veterans' legislation.

One of the priority recommendations of the New Veterans Charter Advisory Group, the Standing Committee and the Veterans Ombudsman's office has been to suggest that SISIP LTD should only apply to non-service related disability. The fundamental proposition that the insurance culture needs to be removed from the compensation made available to veterans and their families is an essential conclusion to this analysis. The compensation of veterans and their dependants should not be a function of the insurance industry whose mandate, in many situations, is to minimize exposure of the insurer's policy when applied to injured or disabled individuals.

One of the fundamental commitments made by the Government at the time of the enactment of the New Veterans Charter was the recognition that the SISIP LTD program should be eliminated and fully replaced by a liberalized Earnings Loss Benefit when applied to service related disability. The constraints placed on the New Veterans Charter by the restrictive provisions of the SISIP LTD program are still felt to this day and should be removed as soon as possible. This Government commitment made by the Minister and Deputy of the day was part and parcel of the understanding between the veteran

stakeholder community and the VAC in consideration of the immediate passage of the Charter by Parliament in 2006.

3. Disability awards commensurate with Civil Court's general damages should be facilitated by VAC.

This would amount to an increase of approximately \$50,000 to the overall grid with appropriate impact on all those receiving disability awards in the adjudicative system.

It is to be noted that, in lieu of implementing this longstanding recommendation of the aforementioned multiple advisory groups, the Minister has opted to propose a new Critical Injury Benefit in the amount of \$70,000. This CIB is limited to the specific circumstances of a transitionally incapacitated veteran and to high end disability award recipients. In effect, the Bill provides that the CIB is payable to a member or veteran who

“... establishes that they sustained one or more severe and traumatic injuries or developed an acute disease and that the injury or disease a) was a service related injury or disease; b) was the result of a sudden and single incident that occurred after March 31, 2006; and c) immediately caused a severe impairment and severe interference in their quality of life...”

It is noteworthy, in this regard, that the CIB is fraught with definitional issues as to who is eligible for this benefit and what “factors are to be considered” by adjudicators in determining the scope and extent of this new provision.

Although we support the establishment of this innovative CIB in recognition of the plight that seriously disabled veterans confront insofar as the level of impairment and impact on their quality of life, the choice of VAC to compensate only this particular class of veterans as opposed to incrementally increasing all pensions in the disability award system is of concern. The recommendations of all of the multiple advisory groups together with the Standing Committee have suggested, as a basic principle, that the entire grid should be elevated to equate to the general damages awarded by the Canadian Civil Courts.

It is not without significance in this regard that one of our major recommendations to the Standing Committee was that VAC adopt the Exceptional Incapacity Allowance concept founded under the Pension Act in regard to seriously impaired high end veteran pensioners. This allowance has traditionally addressed the impact of a disability suffered by 100% veteran pensioners with reference to their difficulty to cope with their overall incapacity. The introduction of EIA in our judgement to the Charter would augment the limitations of the PIA particularly in the circumstance where a seriously disabled veteran confronts the ravages of age.

4. Improved access to Permanent Impairment Allowance and entitlement to higher grade levels of the allowance needs further evaluation.

It will be recalled that the Veterans Ombudsman, in his empirical study of the Charter, identified that 50% of seriously disabled veterans were not receiving PIA (and consequently PIAS) and that 90% of these veterans receiving the award were only obtaining grade 3 (the lowest grade).

The Minister's proposal to widen the regulatory definition of PIA eligibility to those veterans suffering mobility and self-help concerns (paragraph F) is commendable, but once again does not fully satisfy all aspects of the reform of this important allowance. This is particularly so for those seriously disabled veterans who fail to satisfy the criteria for PIA but also of great significance when one considers that the amount of PIA is a major element of the new Retirement Income Security Benefit (post 65).

It is recognized that further study by VAC is to take place with the collaboration of the Veterans Ombudsman's office to provide more clarity and certainty as to the fundamental access to PIA and the higher grade levels of the allowance.

I continue to strongly feel that our proposal to the Standing Committee in this regard is the best approach to improving this access to PIA, i.e., once a veteran is deemed to be permanently incapacitated, the Disability Award received by such a veteran should be the major determinant in assessing his or her grade level of PIA:

- o Over 78% Disability Award should equate to a grade 1 PIA
- o Between 48% and 78% Disability Award should equate to a grade 2 PIA

This form of adjudicative presumption would provide a more simplistic methodology to an overly complex provision of the New Veterans Charter. Not only would this provide administrative efficiency, but it would also incorporate the utilization of the Disability Award as a trigger to the higher grade levels for PIA.

5. The Family Caregiver Relief Benefit (FCRB) requires further re-evaluation as it fails to comprehensibly provide adequate financial support for the families of seriously disabled veterans where significant needs of attendance must be provided by a caregiver.

The newly announced Family Caregiver Relief Benefit will provide eligible veterans with a tax free annual grant of \$7,238.00 so that their caregivers – who are often their spouse or other family member – will have flexibility or relief as required.

This benefit is commendable insofar as it goes as a targeted support so as to allow caregivers appropriate respite or relief, but represents, in my judgement, only one element of the overall concerns confronting the caregivers of seriously disabled veterans in need of attendance. Such families are also facing, in many cases, a significant diminishment in income due to the fact that the caregiver spouse has been forced to give up his or her employment and when coupled with the veteran's 25% loss of income under the ELB/SISIP LTD program often results in a financial crisis in the overall family budget.

It was my clear position at the Veterans Summit that VAC need not "reinvent the wheel" with regard to such caregiver allowances as the Attendance Allowance, founded under the Pension Act, which has been in place for many decades and is a far more generous provision producing \$15,000 - \$20,000 a year of non-taxable benefits to those veterans in significant need of attendance.

It is also highly noteworthy that DND, through its "Attendant Care Benefit" program, provides reimbursement to seriously disabled veterans for payments made to an attendant to look after the Canadian Armed Forces member on a full-time basis. This benefit is paid to the CAF member at a daily rate of \$100.00 (\$3,000.00 a month - \$36,000.00 a year). This benefit implicitly represents a recognition that the financial costs of attendants far exceed the need to address respite. More importantly, the serious question remains in the context of the veteran's transition from DND to VAC as to whether the financial assistance to such families will dramatically drop from the DND program to the VAC FCRB.

In our considered opinion, unfortunately the VAC FCRB program reflects a half measure at best, and fails to comprehensibly provide adequate financial recognition of the cost to a family where significant levels of attendance must be provided by a caregiver spouse or other family member.

6. Further review of the implications of the Retirement Income Security Benefit (RISB) is required to ensure that seriously disabled veterans have sufficient post 65 financial security.

The Minister's announcement as described in the Bill provides specific veterans with a post 65 benefit consisting of 70% of the Earnings Loss Benefit (or SISIP LTD payment) together with 70% of the Permanent Impairment Allowance that the veteran has been receiving from Veterans Affairs less certain deductions yet to be prescribed by regulation. This provision is somewhat difficult to evaluate without the answers to a number of rather significant questions as to the eligibility criteria and the actual components that would be required under the RISB to determine the various outcomes with regard to individual hypothetical cases.

What is crystal clear is that the effectiveness of the RISB is contingent on appropriate enhancements to the PIA/PIAS and ELB (SISIP LTD) provisions of the Act. Without such complementary amendments to provide, for example, improved access to PIA and higher grade levels for the allowance, it is clear that a number of moderately or severely disabled veterans at age 65 will be essentially receiving 70% of the Earnings Loss Benefit which was originally awarded at 75% of previous military service income indexed with a cap of 2% per annum. In our judgement, this would result in less than a satisfactory form of financial security in the traditional retirement years for such disabled veterans. We would have much preferred that the Earnings Loss Benefit be continued for life and that the Earnings Loss Benefit be established at 90% - 100% of previous military service income, particularly given the fact that the principal recipients of this post 65 “pension” will be totally incapacitated veterans.

In our considered judgement, to apply a 70% formula to the post 65 period for a permanently incapacitated veteran based on a public/private sector pension model is not appropriate when it is recognized that the plight of such a seriously disabled veteran post 65 remains unchanged, and his or her financial costs of living continue to be essentially the same.

In conclusion, we would reaffirm our view that the current Bill before Parliament contains positive elements in furthering the reform of the New Veterans Charter. However, on balance, these statutory amendments represent only “half a loaf” when compared to the recommendations made by this Standing Committee and the multiple advisory groups. We would, therefore, respectfully submit that this Committee adopt the position that appropriate amendments be made to address the above-mentioned voids and inequities which remain in the Charter. Should this not be feasible given the time constraints confronting the passage of this Bill and the exigencies of the Parliamentary process, at a minimum we would urge this Committee to obtain a formal commitment from the Minister and the Government to rectify the gaps and shortcomings that are readily apparent within the proposed legislation, and a requirement established that the Minister provide a timeframe for addressing these outstanding substantive concerns.

All of which is respectfully submitted.



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